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AS No. 62 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-07-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

AS No. 62 of 2019

AND

**CMP NO. 2902 OF 2019, CMP NO. 29640 OF 2024,
CMP NO. 29638 OF 2024**

R.Padmanaban
S/o K.V Rajaram, No.36, Arcor Road,
Villapakkam Village, Arcot Taluk, Vellore Dt.

..Appellant(s)

Vs

1. R.Ramalingam
S/o Rajarathinamudaliar, No.227/1, Amman
Koil St., Sevr Village And Post, Arni Taluk,
Tiruvannamalai District.
2. R.SIVAKUMAR (Died)
S/o Ramalingam,
No.227/1, Amman Koil St., Sevr Village And
Post, Arni Tk, Tiruvannamalai Dt.
3. R.Kuppammal
W/o R.Ramalingam,
No.227/1, Amman Koil Street,
Sevr Village and Post,
Arani Taluk, Thiruvannamalai Dist.
4. D.Lakshmi @ Latha,
W/o Late R.Sivakumar,
Anjaneyar koil Street,
Nedukunam Village,
Vandavasi Taluk, Thiruvannamalai Dist.

..Respondent(s)



PRAYER: Appeal Suit filed under Section 96 CPC r/w. Order 41 Rules 1 and 2 of CPC against the decree and Judgment dated 23.10.2018 in O.S.No.48/2017 passed by the Hon'ble Additional District and Sessions Judge (FTC) Court, Arni, Tiruvannamalai Dt.

R2 Died. (R3 and R4 brought on record LRs of the deceased R2, vide Court Order dated 22.02.2023 made in CMP No.3845 of 2023 in AS No.62 of 2019, (SVNJ and RKMJ).

For Appellant(s): Mr.A.Panneerchelvam

For Respondent(s): M/s.D.R.Arunkumar
Counsel for R1 and R3
R2- Died, R4- No Appearance

Judgment

(Judgment of the Court was delivered by M.Jothiraman J.)

Unsuccessful plaintiff has preferred the present appeal suit. The Suit has been filed for Specific Performance, delivery of possession and for the alternative relief of refund of the advance amount. The parties are referred as per their rankings in the Suit.

2. Brief case of the plaintiff is as follows:

2.1. The suit property belongs to the 1st defendant. The 2nd defendant is the son of the 1st defendant. The plaintiff and the 1st defendant entered into an Agreement of Sale dated 24.07.2010 for a consideration of Rs.30,750/- per cent and the total sale consideration was fixed at Rs.36,28,500/-. The total extent of the suit property is 1.18 acres. The period of performance of the contract was



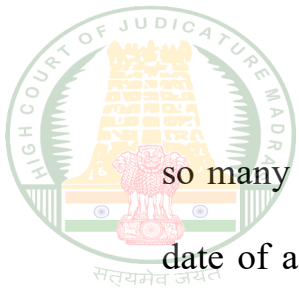
fixed at three months, though it was mutually agreed that time is not the essence of contract. As per the recitals contained in the agreement, the period of

contract will commence on the completion of survey by the 1st defendant and proving the extent which is yet to be performed by the 1st defendant. On the date of agreement, the plaintiff has paid an advance amount of Rs.1,00,000/-.

2.2. The plaintiff is always ready and willing to perform his part of contract and upon request, performed his part of contract by measuring the suit property and to execute the registered sale deed, for which the 1st defendant has been evading. The plaintiff came to know that the 1st defendant, in order to frustrate the contract, executed a Settlement Deed in favour of the 2nd defendant with regard to suit schedule property. The plaintiff issued a notice to the defendants on 23.02.2011, for which the 2nd defendant alone has issued a reply notice on 03.03.2011 containing false and untenable allegations. The 1st defendant neither complied with the demands of the plaintiff. Hence, the plaintiff has filed the Suit for Specific Performance and Delivery of Possession and alternatively prayed for refund of the advance amount.

3. Brief case of the defendants are as follows:

3.1. The defendants denied the Sale Agreement dated 24.07.2010. The defendants denied that the plaintiff issued a notice to the defendants through his counsel on 23.02.2011. Further the defendants stated that the 1st defendant has

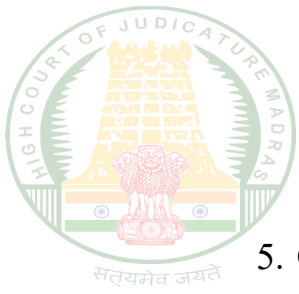


so many times requested the plaintiff to perform the same before expiry of the date of agreement, but the plaintiff did not take care for execution of the sale agreement for want of money to pay the balance of sale consideration. The suit property is an ancestral property of the defendants and there was a suit between the 1st defendant with his sisters before the District Munsif Court, Arani in O.S.No.558 of 2004.

3.2. The defendants further stated that the plaintiff is doing Real Estate Business and his motivation is to purchase the property at lowest rate and to sell the same at higher rate. The plaintiff has unnecessarily filed the suit against the defendants in order to arrange the balance sale consideration during the period of trial. The Suit is barred by limitation and the plaintiff is not entitled to the relief sought for in the Suit.

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

- (i) Whether the Sale Agreement dated 24.07.2010 is valid?
- (ii) Whether the Suit is barred by limitation?
- (iii) Whether the Suit in O.S.No.558/2004 on the file of the District Munsif Court, Arani is binding on the parties?
- (iv) Whether the plaintiff is entitled for the relief sought for?
- (v) To what other reliefs, the plaintiff is entitled to?

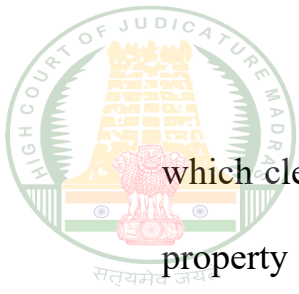


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5. On behalf of the plaintiff, the plaintiff examined himself as PW1 and one A.Arunachalam as PW2 and one P.Ravichandran as PW3. Exs.A1 to A9 were marked. On behalf of the defendant, the first defendant examined himself as DW1 and Exs.B1 and B2 were marked.

6. On appreciation of the evidence adduced on either side, the Court below had negated the relief of Specific Performance and granted the alternative relief of refund of the advance amount. Aggrieved over the same, the plaintiff has preferred the present appeal.

7. During the pendency of the appeal suit, the appellant / plaintiff has filed an application in CMP.No.29638 of 2024 in A.S.No.62 of 2019 under Order 1 Rule 10(2) CPC r/w. Section 151 CPC seeking to implead Tmt.D.Amudha and Tmt.R.Anitha as proposed respondents 5 and 6 in this appeal suit. In the affidavit filed in support of the said application, it has been stated by the plaintiff that during the pendency of the appeal, he has filed an application to implead the respondents 2 and 3 as party to the above appeal and the same was allowed by this Court, vide order dated 22.02.2023. The 1st defendant, pendency of the appeal suit, has executed a Settlement Deed in respect of the suit schedule property in favour of the proposed respondents, vide Doc.No.11291 of 2023 dated 11.12.2023 on the file of the Sub Registrar, Arani,



which clearly establish that the 1st respondent has made encumbrances over the property in violations of the orders passed in CMP.No.2902 of 2019 in A.S.No.62 of 2019 dated 06.02.2019. In view of the subsequent developments that has arisen, it has become just and necessary to implead the said Tmt.D.Amudha and Tmt.R.Anitha as proposed respondents, namely respondents 4 and 5. Hence, the plaintiff has filed the said application.

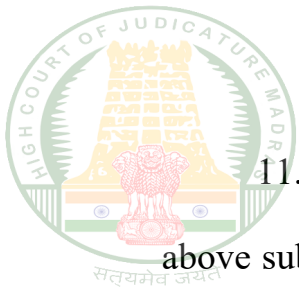
8. The appellant / plaintiff has also filed an application in CMP.No.29640 of 2024 in A.S.No.62 of 2019 under Order 41 Rule 27 CPC to receive additional documents. In the affidavit filed by the appellant in the said application, it has been stated that the 1st defendant had executed settlement deed in favour of the proposed parties, namely Tmt.D.Amudha and Tmt.R.Anitha, which is a clear violation passed by this Court in CMP.No.2902 of 2019 in A.S.No.62 of 2019 dated 06.02.2019. The alienation of the suit property, vide DOC.No.11210 of 2013 dated 11.12.2023 is hit by Section 52 of the Transfer of Property Act. The above said documents are necessary to decide the issue involved in this appeal. If the document is received as an additional evidence, no prejudice would be caused to the other side.

9. The learned counsel appearing for the appellant would submit that the Court below ought to have granted the relief of specific performance, as it has accepted the case of the plaintiff. Since the Court below has given a clear



finding that the Suit for Specific Performance is maintainable and the documents relied on by the defendants will not support the case of the plaintiff, however, the Court below erred in holding that the plaintiff has not verified and confirmed the extent of property as well as the title of the property before entering the Sale Agreement. The Court below rightly concluded that Ex.A1 – Sale Agreement is valid and true and when such a conclusion arrived, the Court below ought not to have rejected the relief of specific performance. The plaintiff is always ready and willing to perform his part of contract and also placed the lodgement schedule before the Court below to deposit the balance sale consideration. However, the Court below has not permitted the plaintiff to deposit the balance sale consideration amount to the credit of the Suit. Therefore, the plaintiff has proved the means to perform his part of contract during the relevant point of time and therefore, negating the relief of specific performance is legally unsustainable and prays for allowing this appeal.

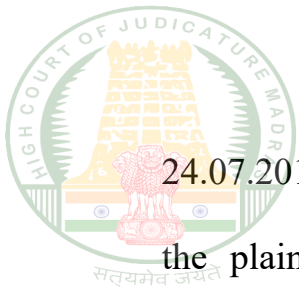
10. *Per contra*, learned counsel appearing for the respondents/defendants would submit that on appreciation of the entire evidence adduced on either side, the Court below has rightly found that the equitable relief of granting specific performance was negated and the relief of refund of the advance amount was granted and there is no infirmity in the judgment and decree passed by the Court below and prays for dismissal of the Suit.



11. We have heard both sides and perused the records. In the light of the above submissions, the following points for determination / issues arises in this appeal suit:

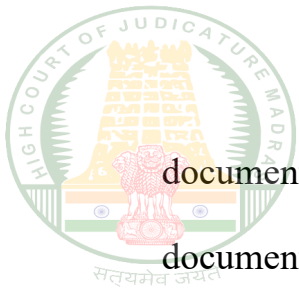
- (i) *Whether the petition filed to receive additional document is to be allowed ?*
- (ii) *Whether the proposed parties are to be impleaded?*
- (iii) *Whether the plaintiff is always ready and willing to perform his part of contract ?*
- (iv) *Whether the plaintiff is entitled for the relief of specific performance ?*

12. It is the specific case of the plaintiff that the 1st defendant executed Ex.A1-Sale Agreement dated 24.07.2010 for a sale consideration @ Rs.30,750/- per cent and total sale consideration was fixed at Rs.36,28,500/- to an extent to 1 Acre 18 cents. On the date of Sale Agreement, the plaintiff has paid an advance of Rs.1,00,000/-. It is seen from the written statement filed on behalf of the defendants wherein in para 4, it has been stated that the allegations in para 2 of the plaint that the agreement dated 24.07.2010 whereunder the 1st defendant has agreed to measure the suit property with the help of surveyor and for the proved extent, the plaintiff has to pay the sale consideration at the rate of Rs.30,750/- per cent and the total sale consideration was fixed at Rs.36,28,500/- are all not true and correct. It is also stated that the agreement of sale dated



24.07.2010 is an unilateral agreement executed by the 1st defendant in favour of the plaintiff, is utterly false. The defendants themselves, in the written statement in para 6, categorically stated that the 1st defendant so many times has requested the plaintiff to perform the sale before the expiry of the sale agreement, but the plaintiff did not take care for execution of the sale agreement for want of money to pay the balance sale consideration. However, in para 10 of the written statement, it has been stated that the agreement of sale is a fabricated document by the plaintiff and created without lawful consideration. Inconsistent stands taken by the defendants in the written statement reveals that the 1st defendant entered into an agreement of sale with the plaintiff under Ex.A1 dated 24.07.2010.

13. During the pendency of this appeal, the 1st defendant had executed settlement deed in favour of the proposed parties mentioned in CMP.No.29638 of 2024, namely Tmt.D.Amudha and Tmt.R.Anitha. Similarly, the Settlement Deed executed by the 1st defendant dated 11.12.2023 is vital to decide the issue involved and the same is received an additional evidence involved in this appeal. During the pendency of the appeal, the appellant / plaintiff has filed two applications to implead Tmt.D.Amudha and Tmt.R.Anitha as respondents 4 and 5. Since the 1st defendant has executed Settlement Deed dated 11.12.2023 on the file of the Sub-Registrar, Arani, it is hit by Section 52 of the Transfer of Property Act. Since subsequent development has arisen in this case and the said



document comes into existence during the pendency of the appeal, the said documents to be received as Additional Evidence after impleading them as proposed respondents.

14. It is seen from the records that along with the petition, Xerox copy of the Settlement Deed in respect of the suit property in favour of the proposed respondents, vide DOC.No.11291 of 2023 dated 11.12.2023 on the file of the SRO, Arani. It is relevant to note that the reasons stated in the affidavit are not sufficient and it does not attract the conditions enumerated under Order 41 Rule 27 CPC. The proposed parties as respondents receiving the Settlement Deed executed by the 1st defendant during the pendency of the appeal have no relevancy to decide the issue involved in this appeal. There is no merits in these petitions and the same are liable to be dismissed. ***Therefore, Issue Nos.1 and 2 are answered accordingly.***

15. PW1 has categorically deposed about the execution of Ex.A1. PWs.2 and 3 have also spoken about the execution of Ex.A1 and the advance amount received by the 1st defendant. Therefore, the execution of Ex.A1 – Sale Agreement has been clearly established by the prosecution.

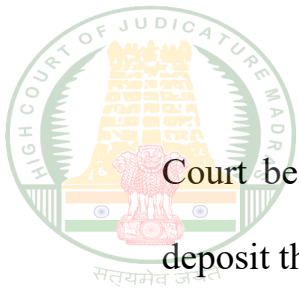
16. A perusal of Ex.A1 shows that the plaintiff and the 1st defendant entered into an Agreement of Sale Dated 24.07.2010, wherein the 1st defendant



has agreed to measure the suit property with the help of surveyor and for proving the extent, the plaintiff has to pay sale consideration @ 30,750/- per cent and the total sale consideration was fixed at Rs.36,28,500/- to a total extent of suit property 1 Acre and 18cents. It also shows that the said Sale Agreement is an unilateral agreement executed by the 1st defendant in favour of the plaintiff. The period of contract was fixed at 3 months. The 1st defendant received an advance amount of Rs.1,00,000/- on the date of the Sale Agreement.

17. DW1, in his cross examination, admitted the execution of Ex.A1 – Sale Agreement and also received Rs.1,00,000/- as advance. He has also admitted the recitals in his cross examination.

18. According to the appellant / plaintiff, he is always ready and willing to perform his part of contract and has been requesting the 1st defendant to perform his contract by measuring the suit property and to prove the extent and receive the balance sale consideration. The suit Agreement of Sale is dated 24.07.2010. The plaintiff issued legal notice to the defendant through his counsel on 23.02.2011 calling upon the defendants to execute the sale deed under Ex.A2, whereas the 2nd defendant has received a notice and given reply under Ex.A3 dated 03.03.2011. The Suit came to be filed on 16.08.2012 after a lapse of two years. According to the appellant, he was ready to deposit the balance sale consideration amount by filing the lodgement schedule before the



Court below. However, the Court below have not permitted the appellant to deposit the amount.

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19. It is also relevant to refer to the decision in ***R.Sharma Naik v. G.Srinivasiah reported in 2024 INSC 927***, wherein it has been held that there is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance. 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.

20. It has been repeatedly held by Hon'ble Supreme Court in several judgments that the plaintiff in a suit for specific performance, should be always ready and willing to perform his part of the contract in terms of the contract. Section 16[c] of the Specific Relief Act bars the relief of specific performance of a contract in favour of a person who fails to aver and prove his / her readiness and willingness to perform his/her part of the contract. It may not be necessary or essential to plaintiff to actually tender money to the defendant or to deposit money in Court unless it is directed by the Court, to prove readiness and willingness, in view of Explanation [i] to Clause [c] of Section 16 of Specific Relief Act. Nevertheless, he must prove his readiness to perform his part of contract [to pay balance] by acceptable evidence.



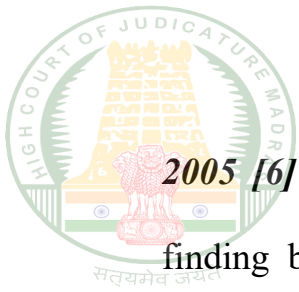
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21. In the case of **Man Kaur Vs. Arthar Singh Sangha** reported 2010 [6]

CTC 652: 2010 [10] SCC 512, the Hon'ble Supreme Court has held as follows:-

“40. A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a consideration of Rs. 10 lakhs and earnest money of Rs. 1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs. 15 lakhs. In such a case there is a clear breach by the defendant. But in that case, if the plaintiff did not have the balance Rs. 9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by the defendant, as he was not “ready and willing” to perform his obligations.”

22. From the illustration given by the Hon'ble Supreme Court, it can be held that the proof of continuous readiness and willingness from the date of contract, time of hearing is mandatory before a person seeks the relief of specific performance. In **Umabai Vs. Nilkanth Dhondiba Chavan** reported in



2005 [6] SCC 243, the Hon'ble Supreme Court has held that there must be finding by the Court regarding the continuous readiness and willingness of

plaintiff to perform his part of the contract before granting specific performance. The Hon'ble Supreme Court recently in ***U.N.Krishnamurthy***

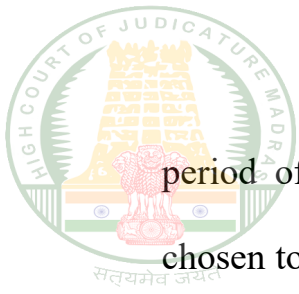
through LR Vs. A.M.Krishnamurthy reported in **2022 [2] MWN [Civil] 799**,

after referring to several binding precedents, has held as follows:-

"45. The Respondent Plaintiff has relied upon the notice dated 13.02.2003 and evidences of PW2 & PW3 to prove that he was always ready and willing to perform his part of the contract. Even though it may be true that the Respondent Plaintiff had deposited the balance sale consideration in court on 06.04.2010, it cannot be ignored that such deposit was made by him seven years after 15.3.2003, being the date by which the sale had to be concluded. No evidence has been adduced on behalf of the Respondent Plaintiff as to how the Respondent Plaintiff was in a position to pay or make arrangements for payment of the balance sale consideration within time. The Courts below also erred in not adjudicating upon this vital issue except to make a sweeping observation that, given that the Respondent Plaintiff was a businessman he had sources to arrange the balance funds. Careful study of balance sheet dated 31.03.2003 of the Respondent Plaintiff would demonstrate that he did not have sufficient funds to discharge his part of contract.

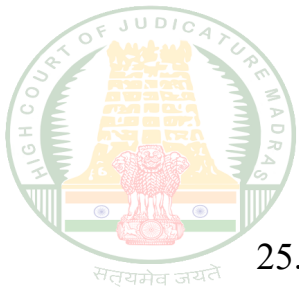
46. It is settled law that for relief of specific performance, the Plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the Plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice."

23. In the case on hand, though time was fixed as 3 months to perform the contract and the plaintiff has to pay the balance sale consideration within a



period of 3 months, however, after a lapse of 7 months alone plaintiff has chosen to issue legal notice under Ex.A2 dated 23.02.2011 and thereafter after a lapse of two years, he has chosen to file the Suit. The plaintiff has failed to prove that he is always ready and willing to perform the contract from the date of the Agreement. The learned counsel appearing for the appellant vehemently contended that the appellant has sufficient means at the relevant point of time and he has prayed to deposit the amount before the Court below through lodgement schedule and since the Court below has not permitted to deposit the amount, he could not able to deposit the amount before the Court below, which clearly shows that the plaintiff is always ready and willing to perform his part of contract. In this regard, the plaintiff has not chosen to place any bank statement of accounts or any other documentary prove that the plaintiff was having financial capacity to pay the balance sale consideration of Rs.36,28,500/- within the period of three months from the date of the sale agreement, since he has paid only a meagre amount of Rs.1,00,000 advance.

24. Upon appreciation of the evidence adduced by either side, the Court below has rightly come to the conclusion that the plaintiff has failed to perform his part of contract as per the conditions stipulated in the agreement and accordingly, negated the relief of specific performance and granted the alternative relief of refund of the advance amount. This Court finds no infirmity or illegality in the judgment and decree passed by the Court below and the same is liable to be dismissed.



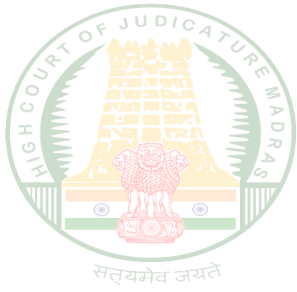
25. In the light of the above reasoning, this Appeal Suit stands dismissed, confirming the decree and Judgment dated 23.10.2018 in O.S.No.48/2017 passed by the learned Additional District and Sessions Judge (FTC) Court, Arni, Tiruvannamalai District. No costs. Consequently, connected miscellaneous petitions are also dismissed.

(N.S.K.,J.) (M.J.R.,J.)
02-07-2026

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

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To
The Additional District and Sessions Court (FTC),
Arni, Tiruvannamalai District.



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