



A.S.No.608 of 2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 31.10.2022

Judgment Delivered on : .11.2022

CORAM

THE HON'BLE Mr. JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.608 of 2011

1.R.Muthusamy

2.M.Karuppusamy

3.S.Rangasamy

4.P.Purushothaman

5.M.Veerakumarasamy

6.K.Balusamy

... Appellants

Vs.

1.V.K.Palanisamy

2.Kuppayal

3.Venkidusamy

4.Vijayalakshmi

5.Venkatesh Prasad

6.Padmapriya



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** (R5 to R6 brought on record as LR's of the deceased 1st respondent Viz., (V.K.Palanisamy) vide Court order dated 29.03.2022 made in C.M.P.No.14863 of 2021 in A.S.No.608 of 2011)

...Respondents

Appeal Suit is filed under Section 96 of the Code of Civil Procedure, 1908, to set aside the Judgment and Decree passed in O.S.No.6 of 2007 on the file of the Additional District Court (Fast Track Court No.II), Gobichettipalayam, dated 08.11.2011, disallowing the relief of specific performance to execute the sale deed and allowing the above first appeal.

For Appellants : Mr.T.Murugamanickam, Senior Counsel,
for Mr.C.S.Saravanan.

For Respondents : Mr.A.K.Kumarasamy, Senior Counsel,
for Mr.S.Kaithamalai Kumaran.(for R3-R6)

: Steps Taken (for R1 & R2)

JUDGMENT

A.The Appeal Suit:-

One *Muthusamy* and five others, filed suit for specific performance to direct the defendants to execute sale deed in favour of the plaintiffs as per the sale agreement dated 23.01.2006 in respect of the suit schedule property and for possession of the suit schedule property. By a Judgment



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and Decree dated 08.11.2011, the learned Additional District Judge, Fast Track Court No.II, Gobichettipalayam, decreed the suit by refusing the prayer of specific performance and granting the alternative relief of refund of advance amount. Aggrieved plaintiffs have filed the present Appeal Suit.

B.The Facts of the Case:-

2.The case of the plaintiffs is that the suit property totally ad-measuring to an extent of 15.77 acres belong to the defendants namely *V.K.Palanisamy*, *Kuppayal* and three other persons namely *M.Arumugam*, *Palaniammal* and another *Palaniammal*. All of them, by the suit sale agreement dated 23.01.2006, agreed to sell the suit property to the plaintiffs and received an advance amount of Rs.6,00,000/- on the same day. The balance sale amount was payable within the ensuing Tamil Month of '*Vaikasi*'. The first defendant in the suit namely *V.K.Palanisamy* and one *Arumugam* received another sum of Rs.1,00,000/- on 03.02.2006 and made endorsement in the rear side of the sale agreement. Of the five persons who entered into the suit sale agreement, the three persons namely *Arumugam*, *Palaniammal* and *C.Palaniammal* received the balance consideration and executed the sale deed in favour of the plaintiffs on 25.05.2006. However,



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borrowing a sum of Rs.2,00,000/- from the said *Arumugam* and others. It is their further case that when the value of the property was not less than Rs.3,50,000/- per acre on the alleged date of agreement and there was no necessity for them to sell at the rate of Rs.1,70,000/- per acre. Even in the extent conveyed by the *Arumugam* and others, the second defendant was entitled 1/4th share in an extent amounting to 3.58 acres but however without her consent the property was sold and no amount was paid to her. It is the contention of the defendants that there has been material alteration in the agreement in respect of the possession being delivered to the plaintiffs. Therefore, since the suit agreement is a forged agreement, the defendants prayed for dismissal of the suit.

C.The Issues and Trial:-

4.On the strength of the said pleadings, the trial Court framed the following five issues in the suit:-

“i)Whether the plaintiffs are entitled for the relief of specific performance?

ii)Whether the suit agreement is genuine?

iii)Whether the plaintiff is entitled for the amount as prayed in the alternative prayer?

iv)Whether the suit property can be security for the said payment?



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v) *To what relief the plaintiffs are entitled to?*”

5.The fourth plaintiff was examined as P.W.1 and one *P.A.Chidambaram* was examined as P.W.2 and one *Natarajan* was examined as P.W.3 and ***Ex.A-1 to Ex.A-12*** were marked on behalf of the plaintiffs. The first defendant examined himself as D.W.1, however no documents were marked on behalf of the defendants.

D.The Findings and Decision of the Trial Court:-

6.The trial Court thereafter proceeded to consider the pleadings and the evidence adduced by the parties and by a Judgment dated 08.11.2011, found that the suit agreement is signed only by the vendors and not by the purchasers. Therefore, the trial Court concluded that the ***Ex.A-1*** agreement is not valid. The Trial Court also found that in the ***Ex.A-1*** agreement in page No.3, it was written that,

".....உங்களுக்காவதும் அல்லது நீங்கள் கோரும்
வேறு நபர்களுக்காவதும் சர்வ வில்லங்க சுத்தமாய்
சுவாதீனத்துடன் கிரயம்முடித்துக்கொடுக்க இதன்
மூலம்நாங்கள் கட்டுப்படுகின்றோம்...."

7.Even in line Nos.9 and 10, the same is mentioned as if, the possession will be hand over at the time of sale. However, in the 14th line,



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it is originally typed as follows:-

"....ஊ கெடுவுக்குள் மீதித் தொகைகளை ரொக்கமாகச் செலுத்திக் கிரயம் முடித்துக் கொள்ள நீங்கள் தயாராக இருந்தும் எங்களுக்கு தகவல் கொடுத்தும், நாங்கள் கீழ்க்கண்ட சொத்துக்களை சர்வ வில்லங்க சுத்தமாய் சுவாதீனத்துடன் தங்களுக்கு கிரயம் முடித்துக் கொடுக்க மறுத்தால் அல்லது தவறினால் இதே மீதித் தொகைகளை ரொக்கமாக நீங்கள் சம்மந்தப்பட்ட டி.மு.கோர்ட்டில் டெபாசிட் செய்துஇ கோர்ட் மூலம் கிரயம்முடித்துக் கொள்ள உங்களுக்கு பூரண அதிகாரம்உண்டு. அதனால் தங்களுக்கு ஏற்படும் சகல செலவு தொகை நஷ்டங்கள் பூராவும் எங்களையே சேர்த்தக்கதாகும். கீழ்க்கண்ட பூமிகளை உங்கள் சுவாதீனத்தில் நாளது தேதியில் நாங்கள் ஒப்படைத்துள்ளோம்....."

8.But the same was striked out and it has been written and some writings are made by hand. No explanation is made in the plaint in respect of these material alteration. The Trial Court further held that even as per the agreement of sale, in the event of the vendors not executing the sale



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deed the purchasers are to deposit the entire sale consideration and pray for specific performance. But however until an *ex-parte* decree was passed in the instant suit the plaintiffs did not deposit the balance sale consideration. Prior to the execution of the sale deed by the *Arumugam* and others, no separate notice was issued to the defendants. The plaintiffs have not let in any evidence that the amount was ready with them and hence were not ready and willing to perform their part of the contract. The Trial Court also found that totally unconnected persons were the attesting witness. The Trial Court however found that the defendants had not proved their version that they borrowed a sum of Rs.2,00,000/- from *Arumugam* and others. The defendants have duly signed the agreement as well as in the endorsement made in the reverse and therefore held that they have received the advance amount of Rs.5,60,000/- from the plaintiffs and that they are liable to return the same with interest at the rate of 12% per annum till the date of plaint and thereafter at the rate of 6% per annum and decreed the suit accordingly.

E.The Submissions:-

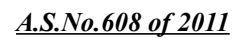
9.Heard *Mr.T. Murugamanickam*, the learned Senior Counsel on



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behalf of the appellants and *Mr.A.K. Kumarasamy* the learned Senior Counsel on behalf of the respondents.

10.*Mr. Murugamanickam*, the learned Senior Counsel, taking this Court through the pleadings and the evidence on record, would submit that this is a clear case where five persons entered into the suit sale agreement and of the five persons three persons have actually executed the sale agreement in favour of the plaintiffs. Only the two defendants alone did not come forward, when the other three persons executed the sale deed on 25.05.2006. Within five days the legal notice was issued in Ex.A3. It can be seen that the defendants feigned ignorance of the sale agreement vide their Ex.A6 reply notice. When the plaintiffs forwarded a photo copy of the sale agreement vide Ex.A7 rejoinder notice, in their reply to rejoinder, they specifically pleaded that the sale agreement is fabricated out of their signatures contained in the blank stamp papers which they gave it to one *Arumugam* and others upon borrowal of sum of Rs.2,00,000/- and they also handed over their original title deeds to the said *Arumugam* and others. Therefore, the plaintiffs immediately filed the present suit. The plaintiffs have clearly pleaded that they are ready and willing to perform



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Counsel would contend that firstly there was no any unilateral alteration in the agreement and in any event the same is not a material alteration given the fact that the possession is not a matter of contest between the parties. Adverting to the reasoning of the Trial Court regarding the readiness and willingness, the learned Senior Counsel would submit that immediately within the time, on 30.05.2006, itself the plaintiffs had issued legal notice. It is the case of the defendants that the suit agreement is forged and fabricated one. They did not specifically plead about the plaintiffs not being in a position to pay the balance sale consideration. On the contrary, the plaintiffs have categorically pleaded about their readiness and willingness. The plaintiffs have issued to the pre-suit notice within time. The plaintiffs need not show the entire sale consideration especially when they have paid a substantial amount of roughly about 25% as advance and when they have paid a major amount to the other vendors and the other vendors have also executed the sale deed in favour of the plaintiffs. There was no doubt about the readiness and willingness of the plaintiffs. As a matter of fact, once the suit was decreed ex-parte immediately plaintiffs deposited the entire sale consideration. In support of his submissions, the learned Senior Counsel relied upon the following Judgments:-



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S.NO	CASE NAME	CITATION	POINTS RELIED ON BY THE APPELLANT



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1.	Aloka Bose v. Paramatma Devi	(2009) 2 SCC 582	1. Any Agreement of sale is signed by both the parties or the vendor alone. 2. An Agreement of Sale signed by the vendor alone and delivered to the purchaser and accepted by the purchaser , is a valid contract. 3. In the event of breach by the vendor, it can be specifically enforced by the purchaser. But , there is no practice of the purchaser alone signing the document.
2.	Sudha Gupta v. Delhi Land and Finance Ltd.	(2019) 14 SCC 266	1. The law requires acceptance from the vendee but Signature of the vendee on the sale or conveyance deed is not mandatory. 2. When signatures of the vendors and witnesses are admitted by the appellant, acceptance is apparent
3.	Adilingam Narayanan	v. (2011) 3 MWN 559	Even if the sale agreement states that the party has to sue for specific performance after depositing the balance sale consideration, it is not mandatory to deposit the same upfront.
4.	Nanjammal Palaniammal	v. CDJ 1993 MHC 633, 1993 2 LW 205	The Specific Performance ought to be granted as a rule but can be denied only when equitable consideration points to its refusal and the circumstances show that damages would constitute an adequate relief.
5.	K.Prakash B.R.Sampath Kumar	v. (2015) 1 SCC 597	1. The Court while granting relief as to specific performance exercises discretionary jurisdiction, the said discretion has to be exercised in accordance with sound and reasonable judicial principles and must not be exercised arbitrarily. Further the plaintiff must show his continued readiness and willingness to perform his part of the contract to the date of hearing. 2. Appellate court not to interfere with the discretion of specific performance of trial court unless it is perverse, arbitrary or against judicial principles. 3. Though in terms of Sec.20 of the Specific Relief Act a party is not entitled to get a decree for specific performance merely because it is lawful to do so,once an



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			agreement to sell is legally and validly proved and further requirements for getting such a decree are established, the court has to exercise its discretion in favour of party seeking relief of specific performance.
6.	Kalianna Gounder v. Palani Gounder	(1970) 1 SCC 56	1. A material alteration is one which varies the rights, liabilities or legal position of the parties as ascertained by the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed or reduces to certainty some provision which was originally unascertained and as such void, or may otherwise prejudice the party bound by the deed as originally executed.
7.	Andal K.Chinnasamy v.	2009 7 MLJ 640	1. If the sale consideration is over and above Rs.25 lakhs no objection certificate has to be obtained from the Income Tax Department by filing necessary draft deeds before it. 2. As per Income Tax Department, such application has to be filed within fifteen days from the date of execution of the agreement in terms of Sec.296 BC of the Income Tax Act, which was in force during the relevant period.

11.Per contra *Mr.A.K. Kumarasamy*, the learned Senior Counsel appearing on behalf of the respondents, drawing the attention of this Court to the suit agreement would contend that when the purchasers have not signed, the agreement was not complete and therefore the Trial Court has rightly come to the conclusion that in the absence of any special reasons for the purchasers not signing the agreement, the agreement is invalid. Regarding possession, since there is material alteration, that has been taken



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into account by the Trial Court. The learned Senior Counsel would also point out that the agreement is dated 23.01.2006 is said to have been entered into in the place of the plaintiffs, stamp paper is said to have been purchased in Tiruppur. The cross examination of the attesting witness would demonstrate that he did not know about the parties and he did not remember many of the particulars. A reading of the suit agreement, it is very clear that the agreement clearly stipulates the deposit of the balance sale consideration upfront for praying for specific performance. Therefore, when the said condition is violated, it is clear that the plaintiffs were not ready and willing to perform their part of the contract. The plaintiffs have also not produced any evidence that as on date of the issue of legal notice or as on date of filing of the suit, he was having the sale consideration. The same is also borne out in the cross examination relating to the income tax details and other documents belonging to the plaintiffs. The Trial Court also had found that as per the recitals of the sale deed, the plaintiffs also did not take any steps even to survey the suit lands. Therefore, in the absence of the above, the Trial Court has rightly found that the plaintiffs were not ready and willing to execute their part of the contract. The learned Senior Counsel would submit that since the defendants admitted



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borrowing some amounts from *Arumugam*, considering the overall facts and circumstances of the case, when the defendants could not deny the signatures, the Trial Court, had done justice to the parties by ordering refund of the advance amount. Now at the belated point of time interfering with the Judgment of the Trial Court would result injustice to the parties. Therefore, the learned Senior Counsel would urge the Court to take into consideration the facts and circumstances of the case and dismiss the Appeal Suit. The learned Senior Counsel would also rely upon the following Judgments in support of his contentions.

Sl. NO	CASE NAME	CITATION	POINTS RELIED ON BY THE RESPONDENT
1.	His Holiness Acharya Swami Ganesh Dassji vs. Sita Ram Thapar	(1996) 4 SCC 526	1. The distinction between readiness and willingness to perform the contract is that the readiness denotes the capacity of the party to perform the contract and the willingness denotes the conduct of the party. 2. The factum of readiness and willingness to perform the contract has to be ascertained from the conduct of the party and attending circumstances. 3. When a party is neither ready nor willing to perform his part of the contract within the stipulated time, when time being the essence of the contract, the party is not entitled to specific performance of the contract.
2.	Ramnath Publications Pvt. Ltd. vs. A.R.Madana Gopal and Ors.	(2008) 8 MLJ 873	1. Where time is emphasized to be the essence of contract, the burden of proof falls upon the person alleging it. 2. With regard to sale of immovable property, there is no presumption that the time is the essence of the contract. So, the



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			Court has to examine the real intention of the parties and attendant circumstances to decide whether time is the essence of the contract. 3. Specific performance of a contract cannot be enforced in favor of a person who fails to prove that he has performed or always been ready and willing to perform the essential terms of the contract which are to be performed by them.
3.	N.Balammal vs. Perinbamuthu	2009 (2) CTC 45	Absence of signature of both parties and even bare or minimal recitals relating to Agreement to Sell and also description of property document cannot be said to be an Agreement to Sale.
4.	R.Rajaram vs. T.R.Maheswaran	2010 (2) MLJ 253	1. Deposit of balance sale consideration is an essential term of contract. 2. Deposit made subsequent to decree does not satisfy condition of pre deposit of balance amount before filing suit for specific performance. 3. Non compliance of mandatory condition itself disentitles plaintiff from obtaining equitable remedy of specific performance.
5.	Saradamani Kandappan vs. S.Rajalakshmi and Ors.	2011-4-L.W. 97	1.The question whether time is the essence of the performance can be considered either with reference to the contract as a whole or with reference to a particular term or condition which is breached. 2. Where time was specified for payment of sale price but not in regard to execution of sale deed, time will become essence only with respect to payment of sale price and not in regard to execution of sale deed.
6.	R.Kumar vs. R.Sushilkumar	(2012)2 MLJ 204	1. In a suit for specific performance, the initial burden is on the plaintiff to plead and prove his readiness and willingness to perform his obligation under the contract in terms of the contract once there is denial of execution of contract.
7.	P.Samiappan and another vs. Rukmani (died) and others	2014 (4) CTC 330	1.Despite agreeing to deposit entire sale consideration before Court and proceed to file Suit , plaintiffs failed to do so and failing to mention their omission in the



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			plaint, will disentitle the plaintiff.
8.	N.Sankaran vs. R.Shanmuga Raj	2021-3-L.W. 438	1.Sale agreement signed only by the vendor is valid and enforceable by the purchaser.
9.	Unik Traders vs. Union of India	(2009) 5 MLJ 1528 (Mad-NOC)	1.The most important issue to be decided in a specific performance suit is whether the plaintiff who came to Court for enforcing the agreement had been ready and willing to perform his part of the contract. 2.The mandate of Section 16(c) of the Specific Relief Act is pre- emptory and the issue will be always undertaken for strict scrutiny irrespective of whether the defendants appear or not or whether the readiness and willingness is put to dock by a specific contention by the defendants or not.

F. Discussion and Findings:-

12.Upon considering the rival submissions made on either side and perusal of the material records of the case, the following points arises for consideration in this Appeal:-

“i)Whether the defendants executed the Ex.A1 sale agreement and received advance amount and undertook to sell the suit property to the plaintiffs?

ii)Whether the Ex.A1 sale agreement is invalid as the purchasers did not signed the same?

iii)Whether the Ex.A1 sale agreement is invalid on account of material alteration?

iv)Whether the plaintiffs were ready and



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willing to perform their part of the contract?

v)To what reliefs the parties are entitled to?"

For point No.i):-

13.In support of the case of the plaintiffs that the defendants had agreed to sell the suit property, one of the plaintiffs namely *P.Purushothaman* was examined as P.W.1. He had spoken to about the defendants executing the sale agreement in the presence of the attesting witnesses and receipt of the sale consideration. He had also spoken to about the receipt of the further consideration and making the endorsement in **Ex.A-9** on the rear side of the stamp paper in the suit agreement. The plaintiffs further examined the attesting witness as P.W.2. The sale agreement is produced as **Ex.A-1** and the endorsement is also marked as **Ex.A-9**. To further corroborate, the sale deed executed by the other defendants is marked as **Ex.A-2**. Thus, the plaintiffs had discharged their onus of proving the suit sale agreement. On the contrary, it is the defendant's case that the suit agreement is a fabricated one out of the blank stamp paper given by the first defendant to the said *Arumugam* and others. If that is the case, firstly there is no explanation as to the signature LTI of the second defendant. This apart, the stamp paper is purchased in the name



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of the second plaintiff. Absolutely no care has been taken by the defendants to confront the plaintiffs or to let in any evidence in respect of the stamp paper. Thus, the attempt on the part of the defendants was only superficial and half-hearted. The further contention of the defendants is that the attesting witness did not know about the particulars as to the identity, avocation etc., of the plaintiffs and the defendants. But attestation has been defined under Section 3 of the Transfer of Property Act and the purpose is to witness the person signing and to affix the attestor's own signature thereof. No knowledge about the personal particulars their avocation, relationship etc., in respect of transactions of the documents is necessary. Therefore when the signature is admitted and the left thumb impression is not denied, the plaintiff's case stands proved. Further the signature in **Ex.A-9** endorsement on the reverse is also admitted. It is too far fetched on the part of the defendants to contend that even while handing over blank stamp paper, the signature was affixed in the rear side. It can be seen that in the said endorsement apart from the signature of the first defendant, the signature of one *Arumugam* is also found and the endorsement appears to be natural and correct. Therefore, I hold that the plaintiffs have proved that the defendants had entered into the suit sale



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agreement in **Ex.A-1**, receiving the advance amount and undertaking to sell the suit property upon receipt of the balance sale consideration.

For point No.ii):-

14.The learned Senior Counsel appearing on behalf of the respondents relied upon the Judgments of this Court in i) **[R.Kumar Vs. R.Sushilkumar]** reported in **(2012) 2 MLJ 204 ii)[N.Sankaran Vs. R.Shanmuga Raj]** reported in **2021-3-L.W. 438** for the proposition that the Purchasers should also mandatorily sign the sale agreement. However in view of the authoritative pronouncement of the Hon'ble Supreme Court of India in **[Aloka Bose Vs. Paramatma Devi]** reported in **2009 – 2 – SCC 582** cited supra, the contention of the learned Senior counsel for the respondents cannot be accepted. It is useful to extract paragraph Nos.18 and 22 of the said Judgment which reads as follows:-

“18.In any agreement of sale, the terms are always negotiated and thereafter reduced in the form of an agreement of sale and signed by both parties or the vendor alone (unless it is by a series of offers and counter-offers by letters or other modes of recognised communication). In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted



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by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of purchaser alone signing an agreement of sale.

.....

.....

22.Thus we hold that the agreement of sale (Ext.2) signed only by the vendor was valid and enforceable by the purchaser."

Thus I answer the question, that even in the absence of the signature of the purchasers, ***Ex.A-1***/ sale agreement is valid.

For point No.iii):-

15.To answer this question, the very Page No.3 of ***Ex.A-1***/sale agreement is given as a picture as hereunder:-

Photo copy of Ex.A1:-



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சென்னை சிறப்பிப்பதற்கும் வாழ்வு, உரிமைகளுக்காவதும் துல்லிய நிகழ்வு கோரும் நெற
நபர்களுக்காவதும் சரிவ வரிசையில் கத்தமாய் கவனித்தமயி சிரமமாவதற்க்கொருக்க
இதன் மூலம்நாடுகளி அருப்பமுண்டு கோரும்.

[illegible]

உருவத்தில் மீதித் தொகையை விரைவாகச் செலவில்லி விரயம்
 ஓடிக்கொண்டு போகும் இடத்தில் எந்தெந்தவகையில் கொம்பும், நாக்கின்
 கீழ்க்குச் சொத்தினை சரிவ் விரைவில் கிடைக்காமல் கவாத்தித்தல் தக்கவகையில்
 விரயம் ஓடிக்கொண்டு போகும் வகையில் அகலாத தகையாக இதை மீதித் தொகையை
 விரைவாக நாக்கின் கீழ்க்குச் சரிவ் விரைவில் கொம்பும், நாக்கின்
 கீழ்க்குச் சொத்தினை உகையாகப் புறம் அகலாமல் கிடைக்காமல் தக்கவகையில்
 ஏற்படும் சகல செலவு தொகை உகையாகப் புறம் அகலாமல் கிடைக்காமல் தக்கவகையில்
 கிடைக்கப் பெறும் உகையாகப் புறம் அகலாமல் கிடைக்காமல் தக்கவகையில்

இந்தப்படித்த நாய்க்கி வீட்டில் ஒரு மகனும் ஒருத்தனும் கொடுத்த
புதிதான தோட்டம், மீண்டும் மறுமலர்ச்சி மருவிய வீட்டிலும் துப்பரவுப் பத்திரம்.

சொத்து விலை

கோபி ரிஷி, புத்தசம்பந்தியப்படி சம்படி, சிறோறு மாவட்டம்சத்தியபுரம் பலாசி சாகர்பிசொயத்து மூலம் விவசாயப்பட்ட விவசாயினி ஸ்தாபகர் :-

க.ச.எண்-	179/1	நெ.பு.வெற	0.14.0
க.ச.எண்-	179/2	நெ.பு.வெற	0.10.5
க.ச.எண்-	179/3	நெ.பு.வெற	0.16.0
க.ச.எண்-	179/4	நெ.பு.வெற	0.71.0
க.ச.எண்-	179/5	நெ.பு.வெற	0.35.5
க.ச.எண்-	179/6	நெ.பு.வெற	0.32.5
க.ச.எண்-	179/7	நெ.பு.வெற	0.68.0

கூலிப்படிவம் 2.74.5 க்கு சரியான ப.ஏ 6.78

[Handwritten notes in Tamil script]

20-12-2020

புணியம்மாள்



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16. Thus, it can be seen that the correction was in respect of handing over of possession. The defendants in this suit did not hand over possession. And the other recitals clearly mention that the possession is not handover. Therefore, instead of writing that the plaintiffs will be permitted to enter into the suit property for the purpose of cleaning the lands so as to facilitate survey, originally it was type written as if possession is handover which is struck off and appropriate corrections are made. Though no signatures are made on the side of the corrections, so as to make it clear, the said sentence is again written in the end of the schedule. Therefore, firstly except for the correction of the typographical error, the same cannot be treated to be an alteration. As rightly pointed out by the learned Senior Counsel on behalf of the appellants, since the possession is not in dispute and the plaintiffs are praying for possession, in any event the same is not material to the dispute between the parties and therefore does not amount to material alteration. Further, as per the defendants, the entire suit agreement is a fabricated one. The pleading regarding material alteration is absolutely frivolous. I accordingly answered the question that Ex-A1 agreement is not invalid for material alteration.



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For point No.iv):-

17.It is for the plaintiffs to categorically to plead and prove that the plaintiffs were ready and willing. The plaintiffs have expressly pleaded in paragraphs 5 and 6 of the plaint that the plaintiffs were always ready and willing to perform their part of the contract. The **Ex.A-9** endorsement of disbursement of further sale consideration, causing the legal notice within the time limit that is on 30.05.2006, which is marked as **Ex.A-3** would go to show that the plaintiffs were ready and willing to perform the contract. In this case, when the suit notice was issued on 30.05.2006, the reply notice was sent by the first defendant alone feigning ignorance of the sale agreement. On the very next day, that is, on 08.06.2006, a rejoinder notice has been sent duly enclosing the suit agreement. Immediately, thereof, a reply in **Ex.A-8** has been caused by the first defendant by denying the agreement itself. Immediately there upon the suit is filed. Therefore, there was no laches whatsoever on the part of the plaintiffs in taking steps in issuing pre suit notice as well as in filing the suit. The contention of the respondents that the plaintiffs had not taken steps to survey the property is again without any substance because the covenant was made in the sale



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agreement for the benefit of the purchasers to survey the property and if there is anything lesser in the extent, accordingly the sale price can be re-calculated. Therefore, when the plaintiffs have gone ahead and registered the extents from the other three vendors and willing to register the extent as represented by the vendors, the non-carrying out the survey, cannot be put against the plaintiffs. The other ground on which the Trial Court held that the plaintiffs are not ready and willing is on account of the fact that there is a clause in *Ex.A-1* sale agreement to deposit the entire amount and pray for specific performance. The said clause is extracted hereunder for ready reference:

"...ஊ கெடுவுக்குள் மீதித் தொகைகளை
ரொக்கமாகச் செலுத்திக் கிரயம் முடித்துக்
கொள்ள நீங்கள் தயாராக இருந்தும் எங்களுக்கு
தகவல் கொடுத்தும், நாங்கள் கீழ்கண்ட
சொத்துக்களை சர்வ வில்லங்க சுத்தமாய்
சுவாதீனத்துடன் தங்களுக்கு கிரயம் முடித்துக்
கொடுக்க மறுத்தால் அல்லது தவறினால் இமே
மீதித் தொகைகளை ரொக்கமாக நீங்கள்
சம்மந்தப்பட்ட டி.மு. கோர்ட்டில் டெபாசிட்டுசெய்து,
கோர்ட் மூலம் கிரயம் முடித்துக்கொள்ள



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உங்களுக்கு பூரண அதிகாரம் உண்டு...."

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18.Firstly it can be seen that the above clause shows that in the event, the vendors are not coming forward for executing the sale deed, the plaintiffs can approach the District Munsif Court and deposit the balance sale consideration and complete the transaction. The same does not in any manner expressly mention that the amount has to be deposited upfront. When the appropriate Court is approached, it will be open for the plaintiff to deposit by making an application at the time of filing of the suit or after the Court grants permission in the main suit. In this regard, the learned Senior Counsel appearing on behalf of the respondents would rely upon the Judgment of this Court in **P.Samiappan** cited supra. In which similar clause has been considered by this Court and it was held in Paragraph No.22 as follows:-

“22.Despite agreeing to a specific condition that the plaintiffs have to deposit the entire amount of entire sale consideration before the Court and proceed to file the suit, the plaintiffs have conveniently given a go-by to the same. Learned counsel for the defendants also pointed out that the plaintiffs have not deposited the sale consideration as agreed in the Agreement. But, by way of reply, learned Counsel for the plaintiffs submitted that



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though it is mentioned in the Agreement to deposit the balance of sale consideration before proceeding to Court, it is not mandatory to deposit excepting by direction of the Court. Having agreed to deposit the money as per the pre-direction of the Court and having failed to do so, at least, in my considered opinion, the plaintiffs in all fairness, ought to have mentioned the same in the plaint. The plaintiffs have deliberately failed to do so and in view of such omissions, it could be concluded that the plaintiffs have not come to Court with true set of facts.”

19.The learned Senior Counsel also relied upon the Judgment in

R.Rajaram cited supra in which it is held as follows:-

“37.....If there was no condition to deposit the amount as per the agreement entered into between the parties, there was no necessity to make deposit simultaneous with institution of the suit for specific performance. Therefore, it was only in pursuance of the binding contractual term as found in Ex.A-1, plaintiff has applied for issuance of challan. However, the plaintiff has conveniently omitted to note the fact that the mandatory provision as contained in Ex.A-1 was for deposit of money before the Trial Court simultaneous with the institution of suit for specific performance and



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not making an application for issuance of challan without a follow up action to deposit the balance consideration. The necessity to make the deposit before the Court along with the suit assumes significance in the present case on account of the contention of the defendants that the plaintiff was not having the balance sale consideration with him and that was the only reason for the delay. There was no attempt made by the plaintiff to prove his financial capacity before the Court.”

The learned Senior Counsel appearing on behalf of the appellants on the contrary would rely upon the Judgment of this Court, in **Adilingam** cited supra which also considered similar clause and it is essential to extract paragraph No.12 which reads as hereunder:-

“12. I am unable to accept the contention of the learned Senior Counsel. In the above judgment, this court has considered a clause in the agreement of sale by which the agreement holder was directed to deposit the balance sale consideration before the court and to file the suit for specific performance, in the event of failure on the part of the executant to execute the sale deed. In that circumstance, the learned Judge held that while filing the suit for specific performance, the plaintiff did not deposit the balance sale consideration as stipulated in the agreement and depositing of balance sale



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consideration before filing the suit for specific performance was a condition precedent as per the agreement and the plaintiff viz., the agreement holder in that suit failed to deposit the amount and therefore, he committed breach of contract and therefore, he is not entitled to the relief of specific performance. In this case, the recitals are not identical and as stated supra, it was only stated that in the event of failure on the part of the deceased first defendant in executing the sale deed, the agreement holder shall deposit the amount before the court and treat the agreement of sale as sale deed and apply for compulsory registration. Therefore, the wordings in both the agreements are different and in the agreement which was the subject matter of the judgment reported in (2010) 2 MLJ 253, the agreement holder was directed to deposit the amount in court and file the suit for specific performance. In the circumstances, the learned Judge held that the condition was prescribed under the agreement of sale and that condition was not complied with and therefore, the agreement holder is not entitled to the relief of specific performance. But, in this case, there was no such condition that before filing the suit for specific performance, the first respondent/plaintiff has to deposit the amount. It was only stated that the first respondent/plaintiff shall



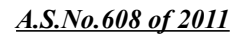
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deposit the amount and treat the agreement of sale as sale deed and apply for compulsory registration.”

20. Thus even though there is an apparent cleavage of opinion in respect of the broadly identical clauses, it can be seen that the decision in all the above judgements have been arrived at depending on the facts and circumstances of the case and the exact wordings of the clauses also differ. As a matter of fact, the present clause mandates approaching District Munsif Court, which is impossible. Even literally going by the Clause, the plaintiff has to approach the Court, which means by filing the suit for specific performance, then deposit the amount (which can be after the decree also) and then complete the transaction. It also does not specifically say that the amount to be deposited upfront. The amount will be deposited by the plaintiff and then only the transaction of sale will be completed. Further, in this case, the plea of the defendants is one of total denial. Even though the defendants had contended that agreement itself is fabricated, still the Trial Court had found that the defendants are liable to refund the advance amount and the defendants have not also preferred any Appeal. When such is the conduct of the defendants in this case, especially when there is no lapse on the part of the plaintiff in issuing legal issue and when



“The ordinary rule is that specific performance should be granted. It ought to be denied only when equitable considerations point to its refusal and the circumstances show that damages would constitute an adequate relief. In the present case the conduct of the appellant has not been such as to disentitle him to the relief of specific performance. He has acted fairly throughout, and there is nothing to show that by any act of omission or commission he encouraged Mohsinali and Qurban Hussain to enter into the sale with the first and second respondents. There is no evidence that the appellant secured an unfair advantage over Mohsinali



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and Qurban Hussain when he entered into the agreement. Nor is there anything to prove that the performance of the contract would involve the respondents in some hardship which they did not foresee”.

21. Therefore, ordinarily the Court would allow the specific performance and the reading of the clauses of the contract would not be in isolation but should be taking into account their conduct and fairness. I hold that the plaintiffs are ready and willing to perform their part of contract and when they were ready and willing, specific performance cannot be refused to the parties who are rightfully entitled to the relief.

For point No.v):-

22. In view of my above answers to the questions, I answer the issue No.1 framed by the Trial Court that the plaintiffs are entitled for the relief of specific performance. I answer the issue No.2 that the suit sale agreement in **Ex.A-1** is genuine. In view of the relief of specific performance being granted to the plaintiffs, answering issues Nos.3 and 4 does not arise and to the said extent, the Judgment and Decree of the Trial



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Court is set aside and modified. In respect of issue No.5, I hold that the plaintiffs are entitled for the relief of specific performance as prayed for in the suit and plaintiffs had already deposited the sale consideration on 18.09.2009 and therefore defendants are entitled for payment of sum with accrued interest upon execution of the sale deed in favour of the plaintiffs. If the defendants do not come forward to execute the sale deed within a period of one month, the plaintiffs can cause the sale deed to be executed by the Trial Court. The plaintiffs are also entitled for costs throughout.

G. The Decree:

23.In the result,

i) A.S.No.608 of 2011 is allowed;

ii) O.S.No.6 of 2007 on the file of the Additional District Judge, Fast

Track Court No.II, Gobichettipalayam is decreed on the following terms:-

a) the defendants are directed to execute the sale deed in favour of the plaintiffs in respect of the suit schedule properties within one month from today;

b) if the defendants do not come forward to execute the sale deed, the plaintiffs shall be entitled to have the sale deed executed by the Trial Court through an appropriate



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officer empowered by the Court to do so and the plaintiffs shall bear all the stamp duty and registration charges in respect thereof;

c) Upon execution of the sale deed in favour of the plaintiffs either by the defendants or by Court, the defendants will be entitled for payment out of the entire balance sale consideration of Rs.15,02,100/- deposited by the plaintiffs along with accrued interest and the Trial Court shall pay the same, to the defendants without insisting for any formal application, only upon verification of the identity of the defendants;

iii) The plaintiffs are entitled for costs throughout.

.11.2022

Index: Yes/No

Speaking Order: Yes/No

ep



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- 1.The Additional District Court
(Fast Track Court No.II),
Gobichettipalayam.
- 2.The Section Officer,
VR Section,
High Court of Madras.



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D.BHARATHA CHAKRAVARTHY.J.,

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.11.2022