BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.04.2022

PRONOUNCED ON : 28.04.2022

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

A.S. (MD) No. 124 of 2020

P.Dhanalakshmi (died)
P.Murugesan ... Appellant / 2nd Defendant

Vs.

1. V.Vinayagamoorthy

2. V.Karthika ... Respondents 1 & 2 / Plaintiffs 1 & 2

3. P.Kannan ... 3rd Respondent / 3rd Defendant

PRAYER: Appeal Suit filed under Order 41 Rule 1 r/w. Section 96 of the Civil Procedure Code, against the judgment and decree dated 17.02.2020 made in O.S. No. 170 of 2008 on the file of the IV Additional District Court, Madurai.

For Appellant : Ms.J.Anandhavalli

For Respondents : Mr.T.C.S.Thillainayagam

J U D G M E N T

This Appeal Suit has been preferred challenging the Judgment and Decree of the learned IV Additional District Judge, Madurai, dated 17.02.2020 made in O.S. No. 170 of 2008.

2. The appellant is the 2nd defendant in the suit; the respondents 1 and 2 are the plaintiffs and the 3rd respondent is the 3rd defendant; the plaintiffs have filed a suit for the relief of specific performance; the 1st defendant offered to sell the suit properties to the plaintiffs and entered into a sale agreement dated 23.06.2008; as per the sale agreement, the sale consideration was fixed at Rs.18,50,000/- (Rupees Eighteen Lakhs and Fifty Thousand only); the 1st defendant received a part sale consideration of

Rs.3,50,000/- (Rupees Three Lakhs and Fifty Thousand only); in pursuance of the sale agreement, the entire sale consideration has to be paid within three months from 23.06.2008; the 1st defendant had availed a housing loan at Alwar Nagar Co-operative Building Society Limited by creating an equitable mortgage in respect of the suit properties; as per the instructions and the details given by the 1st defendant, the plaintiffs paid the balance loan amount of Rs.9,70,500/- (Rupees Nine Lakhs Seventy Thousand and Five Hundred only) to Alwar Nagar Co-operative Building Society Limited on 06.09.2008; out of the total sale consideration of Rs.18,50,000/- (Rupees Eighteen Lakhs Fifty Thousand only), the plaintiffs have paid a sum of Rs.13,20,500/- (Rupees Thirteen Lakhs Twenty Thousand and Five Hundred only); after discharging the loan, the plaintiffs asked the 1st defendant to receive the balance sale consideration of Rs.5,29,500/- (Rupees Five Lakhs Twenty Nine Thousand and Five Hundred only) and execute the sale deed in their favour and surrender vacant possession of the suit properties along with the original documents; the 1st defendant evaded to perform her part of contract; hence, the plaintiffs sent a legal notice on 21.10.2008 calling upon the 1st defendant to execute the sale deed after receiving balance sale consideration; despite the plaintiffs were all along ready and willing to perform their part of contract, the 1st defendant evaded to execute the sale deed; hence, the plaintiff's have filed the suit for specific performance.

3. The 1st defendant has filed the written statement by stating that the plaintiffs approached the 1st defendant for purchasing the suit properties and sale agreement was entered into between them on 31.03.2008 for a sale consideration of Rs.18,50,000/- (Rupees Eighteen Lakhs and Fifty Thousand only); the plaintiffs have paid a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as an advance; three months time was agreed to perform the contract; despite that, the plaintiffs did not come forward to complete the sale; since they sought further time to mobilize the funds, another agreement dated 23.06.2008 was entered into between the plaintiffs and the 1st defendant; the plaintiffs have also paid a further sum of Rs.50,000/- (Rupees Fifty Thousand only) and a further time of three months was fixed on 23.06.2008; it was agreed that the time is the essence of the contract; even thereafter, the plaintiffs did not come forward to get the contract completed; the 1st defendant had availed a loan from Alwar Nagar Co-operative Building Society and she had paid the entire due to the Society; when the 1st defendant approached the Society to get back the original documents, she came to know that the documents were entrusted to State Bank of India Main Branch, West Veli Street, Madurai by the Registrar of the Alwar Nagar Co-operative Building Society on the application made by the plaintiffs; the Registrar of the Society, the Branch Manager of the State Bank of India, Main Branch, Madurai and the plaintiffs have conspired together and created a letter as though the 1st defendant had given consent letter to take over the loan from the Society by the State Bank of India; even though the plaintiffs are not entitled to create any mortgage in respect of the suit properties or to utilize the title deeds of the properties for creating any other mortgage, the loan was granted to the plaintiffs on the basis of the said documents; the 1st defendant has given a police complaint against the plaintiffs and the Authorities of the Society and the Bank; since the Police has not taken any action, she has filed a Writ Petition in W.P.(MD) No. 10598 of 2008 and got a direction to register the case; only thereafter, FIR was registered against them in Crime No. 11 of 2009; since the plaintiffs did not come forward to complete the sale agreement as per the terms of the contract; the 1st defendant sent a telegram and notice on 03.11.2008 stating that the plaintiffs rescinded the contract and hence they are not entitled to the relief of any performance; in order to escape from the criminal liability, the plaintiffs have rushed to the Court with unclean hands by placing false and incorrect materials; hence, the suit should be dismissed.

4. The 1st defendant died during the pendency of the suit and her sons were impleaded as legal heirs as defendants 2 and 3. The 2nd defendant filed the additional written statement by stating that the plaintiffs were not ready and willing to perform their part of contract. The 1st defendant availed a loan of Rs.4,50,000/- (Rupees Four Lakhs and Fifty Thousand only) from Alwar Nagar Co-operative Building Society; just in order to escape from the criminal liability, the plaintiffs misused the 1st defendant's Society loan, the sale agreement was a created one; hence, the suit should be dismissed.

5. On the basis of the above pleadings, the learned trial Judge has framed the following issues:

(i) Whether the plaintiffs are entitled to specific performance of the contract dated 23.06.2008?

(ii) Whether the time is essence of the contract in performing obligation?

(iii) To what any relief, if any, the plaintiffs are entitled to?

6. During the course of trial, on the side of the plaintiffs, three witnesses were examined as PW1 to PW3 and Exs.A1 to A12 were marked. On the side of the defendants, one witness was examined as DW1 and Exs.B1 to B12 were marked. At the conclusion of the trial, the learned Judge decreed the suit for specific performance. Aggrieved over the same, the 2nd defendant has preferred the Appeal Suit.

7. The learned counsel for the appellant submitted that the respondents 1 and 2 colluded with the Bank and Alwar Nagar Co-operative Building Society and acted in the interest of the 1st defendant; the respondents 1 and 2 managed to get the loan by making use of the title deeds of the 1st defendant even before the completion of the sale transaction; the 3rd respondent had got the title deeds of the 1st defendant without her knowledge and consent; the respondents 1 and 2 have suppressed the earlier agreement dated 31.03.2008; the learned trial Judge has not recorded the findings about the readiness and willingness on the part of the respondents 1 and 2; the respondents 1 and 2 did not have any financial capability to perform their part of contract and get the sale deed executed; despite the time is essence of contract, the respondents 1 and 2 did not prove that they were ready and willing to perform their part of contract within three months time; the respondents 1 and 2 did not deposit the balance sale consideration as proof of their readiness and willingness; the respondents 1 and 2 cheated the 1st defendant by colluding with the 3rd respondent and the 1st defendant's loan was discharged without her knowledge; since the learned trial Judge omitted to appreciate the evidence in proper perspective, the Appeal Suit should be allowed.

8. The learned counsel for the respondents submitted that in Ex.A2 - sale agreement itself, there is a mention about the sale agreement and the 1st defendant being a party to the sale agreement cannot deny its terms; the respondents 1 and 2 have arranged the funds by way of raising house loan with the State Bank of India and got a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) sanctioned as loan; from the above sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only), the housing loan of the 1st defendant pending with the Society was also discharged; the 1st defendant was making false allegation against the respondents 1 and 2 that they utilized the title deeds and availed loan from the Bank by depositing the title deeds; after paying the Society loan of Rs.9,70,500/- (Rupees Nine Lakhs Seventy Thousand and Five Hundred only) from the sale consideration, there is a balance of Rs.5,29,500/- (Rupees Five Lakhs Twenty Nine Thousand and Five Hundred only) available with the respondents' loan account and that would show that the respondents readiness to perform their contract; the conduct of the respondents 1 and 2 in discharging the loan of the 1st defendant and calling upon her to get the balance sale consideration would show their willingness; the learned trial Judge has rightly considered the evidence and passed the decree in favour of the respondents 1 and 2 and it does not require any interference.

9. On the basis of the rival submission made by both side counsel, I feel that the following points for consideration are essential in this Appeal Suit:

"(i) Whether the respondents 1 and 2 were ready and willing to perform their part of contract?
(ii) Whether the judgement and decree of the trial Court in granting the relief of specific performance is fair and proper?"

10. The fact that the sale agreement was entered into between the deceased 1st defendant and the respondents 1 and 2 / plaintiffs is not disputed. The said sale agreement dated 23.06.2008 has been marked as Ex.A2. Even prior to the above sale agreement, a sale agreement was entered into between themselves on 31.03.2008. At that point of time, a sum of Rs.3,00,000/- (Rupees Three Lakhs only) was paid as an advance amount. The time for performance of contract was agreed at three months. However, on 23.06.2008, another sale agreement was entered and in the sale agreement, the facts about the earlier sale agreement, dated 31.03.2008 is also mentioned. The advance amount of Rs.3,00,000/- (Rupees Three Lakhs only) already paid during the first sale agreement was credited towards sale consideration of further part sale consideration of Rs.50,000/- (Rupees Fifty Thousand only) paid on 23.06.2008. So, a total sum of Rs.3,50,000/- (Rupees Three Lakhs and Fifty Thousand only) was paid as part sale consideration and the total sale consideration agreed was Rs.18,50,000/- (Rupees Eighteen Lakhs and Fifty Thousand only). The above facts are not in dispute.

11. Even as per Ex.A2 - sale agreement, the time for performance was agreed on 23.06.2008 at three months. It is the submission of the appellant / 2nd defendant that the respondents 1 and 2 were not ready and willing to perform their part of contract and in fact, they did not have any financial wherewithal to meet out the sale transaction. The 1st defendant had availed a loan from Alwar Nagar Co-operative Building Society and the title deeds of the suit properties were deposited with the Society by creating an equitable mortgage. The said loan was pending at the time when Ex.A2 - sale agreement was entered.

12. The learned counsel for the respondents 1 and 2 submitted that the above loan was also discharged by the respondents 1 and 2 by way of availing loan from the Bank. The appellant did not deny the discharge of the above said loan amount. But he claimed that the said loan was discharged without the knowledge of the 1st defendant and the title deeds were transferred from Alwar Nagar Co-operative Building Society Limited to the State Bank of India. It is further submitted that the respondents 1 and 2 were not the owners of the suit properties and hence, the Bank ought not to have sanctioned any loan on the strength of the suit properties offered as security by the respondents 1 and 2. By making the above said allegations, the 1st defendant who is the appellant's mother had preferred the complaint to the Society's Head Office and to the Police. The complaint given to the Police by the 1st defendant is marked as Ex.B9 and FIR – B11 has also been registered on the basis of the above complaint.

13. The learned counsel for the respondents 1 and 2 further submitted that the charge sheet on the said complaint was referred as mistake of fact. Though it is claimed by the appellant that the respondents 1 and 2 have availed loan from the Bank by offering the title deeds of the suit properties as security, no documents is produced to show the same. No Bank including the Nationalized Bank like the State Bank of India would grant loan to a person on the basis of someone's property unless the owner of the property stands as a co-obligant or a guarantor. The respondents 1 and 2 produced Ex.A4 – loan sanctioning letter to show that the State Bank of India sanctioned the loan of Rs.15,00,000/- (Rupees Fifteen Lakhs only). Only from and out of the above, the said loan in respect of the suit property pending with Alwar Nagar Co-operative Building Society was discharged. It is the claim of the respondents 1 and 2 that after discharging the above loan, she still had the balance amount in her term loan account and called upon the 1st defendant to receive the balance sale consideration and executed the sale agreement. It is seen in the written statement of the 1st defendant that the loan was discharged by her. The above claim of the 1st defendant is false, because the loan amount was settled directly by the Bank from and out of the loan sanctioned to the 1st defendant.

14. Ex.A4 – loan sanction letter would show that a term loan of Rs.15,00,000/- (Rupees Fifteen Lakhs only) was sanctioned on 19.08.2008. Ex – A12 would show that the loan was standing in the name of the 1st defendant with Alwar Nagar Co-operative Building Society and it was discharged through State Bank of India cheque dated 06.09.2008 issued for a sum of Rs.9,70,500/- (Rupees Nine Lakhs Seventy Thousand and Five Hundred only). Since the State Bank of India had taken over the loan of the 1st defendant pending with Alwar Nagar Co-operative Building Society, the title document in respect of the suit properties were directly received by the Bank from the Society. The claim of the appellant is that all the transactions had happened without the knowledge of the 1st defendant. But the respondents 1 and 2 have stated that the loan was discharged through Bank Cheque, only with the knowledge of the 1st defendant and in fact the details about the outstanding amount in her loan itself was obtained from Alwar Nagar Co-operative Building Society only through the 1st defendant.

15. Ex.A3 would show that the outstanding amount as on 21.07.2008 was Rs.9,56,499/- (Rupees Nine Lakhs Fifty Six Thousand and Four Hundred and Ninety Nine only). In Ex.A4, the loan was sanctioned to the respondents 1 and 2 for the proposed purchase of a residential house and it is in practice that the Bank would sanction loan for the proposed purchaser on the basis of his sale agreement and on production of other documents required for the loan. On the date of execution of the sale, the loan amount so sanctioned would be given to the credit of the vendor for appropriating the same towards sale consideration. After the completion of the sale, the borrower should get the parent document from the vendor and deposit it with the Bank along with the sale deed by way of security for the loan offered to him. In the case in hand, it seems that the respondents 1 and 2 have availed the Bank loan for the purpose of proposed purchase of the suit house. Since the property had a loan with Alwar Nagar Co-operative Building Society, it is incidental that a portion of the loan sanctioned to the respondents 1 and 2 was issued to the credit of the loan account of the 1st defendant pending with the Society.

16. It is at the option of the purchasers to raise money from various sources in order to complete the sale. So far as the respondents 1 and 2 are concerned, they have approached the Bank to raise funds in order to complete the sale as per the sale agreement Ex.A2. The respondents 1 and 2 have chosen to avail bank loan for the purpose of meeting out the sale. Since the loan in respect of the suit property availed by the 1st defendant at Alwar Nagar Co-operative Building Society was also incidental to the sale, the loan was discharged through the Bank itself.

17. It is difficult to believe that the purchaser of the suit property had taken the risk of discharging the loan of the 1st defendant without her knowledge. Because the risk goes with the respondents 1 and 2 and EMI for the loan availed by them from the Bank would also become their lability. No purchaser would come forward and discharge the loan of the buyer from and out of the loan availed by him from the Bank without the involvement of the buyer. Without active participation of the 1st defendant and without the 1st defendant and his consent, the Bank could not have taken over the loan of the 1st defendant from and out of the house loan sanctioned to the respondents 1 and 2. So the submission of the appellant that the above loan was discharged without the knowledge of the 1st defendant cannot be countenanced.

18. Since the Bank had discharged the pending Society loan, it would have directly got the title deeds from the Society. Had there not been a loan, the entire balance sale consideration would have been given to the credit of the vendor either through demand draft or otherwise. After the completion of the sale the title deeds would be received from the vendor and then deposited by him as security for the amount already sanctioned to her for finishing the sale project.

19. After the loan of the 1st defendant's Society loan was discharged, the 1st defendant had taken advantage of the same and claimed her title deeds back from the Society by falsely alleging that she only had paid the pending dues. Since the 1st defendant had preferred complaint against the respondents 1 and 2 / plaintiffs, the Bank and Alwar Nagar Co-operative Building Society Limited the charge sheet appears to have been referred as mistake of fact. Ex.B6 - letter of the 1st defendant sent to the Secretary would show how intelligently the 1st defendant was playing the games. In Ex.B6 - letter to the Society, the 1st defendant has stated that she had paid the Bank loan through the Bank Cheque and that she is entitled to get back the title deeds. If the amount towards the loan pending with Alwar Nagar Co-operative Building Society was arranged by the 1st defendant herself, it would have been in the form of Demand Draft drawn in favour of the Society. Banker's cheque would not have been issued unless the said amount was a loan sanctioned to a party but payable to the Society. Since the respondents being the agreement holder of the suit properties, they have applied for house loan and got it sanctioned for Rs.15,00,000/- (Rupees Fifteen Lakhs only). Out of which, Rs.9,70,500/- (Rupees Nine Lakhs Seventy Thousand and Five Hundred only) was paid towards loan of the 1st defendant pending with the Society. On some ill-advice, the 1st defendant continued to give various complaints against the Authorities by taking advantage of the discharge of the loan.

20. It is to be noted that the respondents 1 and 2 got a loan for a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) on 19.08.2008 itself and the 1st defendant's Society loan was also discharged on 08.09.2008. All these transactions are within time limit of three months from the date of Ex.A2 - sale agreement. Ex.A12, letter sent by the Bank to Alwar Nagar Co-operative Building Society Limited would show that the Cheque bearing No.224597 dated 06.09.2008 was drawn in favour of the Society for a sum of Rs.9,70,500/- (Rupees Nine Lakhs Seventy Thousand and Five Hundred only) towards home loan of the 1st defendant was discharged on 08.09.2008 itself. In the sale deed itself, one of the officials of the State Bank of India was deputed to get back the title itself from the Society. The Bank had taken over the loan of the 1st defendant and got back title deeds from the Society.

21. Even before the bank had got the title deeds from the Society subsequent to its letter dated 08.09.2008, the loan amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) was sanctioned to the respondents 1 and 2 on 19.08.2008. Admittedly, on 19.08.2008, the respondents could not have got the title of the property in order to create equitable mortgage by deposit of title deeds on the said date.

22. Since the 1st defendant did not come forward to receive the balance sale consideration and got the sale deed executed, the plaintiffs issued Ex.A6 - legal notice on 21.10.2008. They have stated in the said notice that after having discharged the loan of the 1st defendant pending with the Society, they are ready to pay the balance of Rs.5,29,500/- (Rupees Five Lakhs Twenty Nine Thousand and Five Hundred only) to the 1st defendant and get the sale deed executed by her. It is quite possible that out of the total amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) sanctioned by the Bank in favour of the respondents 1 and 2, a sum of Rs.5,29,500/- (Rupees Five Lakhs Twenty Nine Thousand and Five Hundred only) would have been available, after meeting out the Society loan of Rs.9,70,500/- (Rupees Nine Lakhs Seventy Thousand and Five Hundred only).

23. The learned counsel for the appellant submitted that the learned trial Judge did not record the readiness and willingness of the respondents 1 and 2 in performing their part of contract. The conduct of the 1st defendant in applying the housing loan of Rs.15,00,000/- (Rupees Fifteen Lakhs only) and got it sanctioned within three months period and discharged the pending loan of the 1st defendant from and out of the said amount would show that the respondents 1 and 2 were always ready and willing to perform their part of contract. The balance amount of Rs.5,29,500/- (Rupees Five Lakhs Twenty Nine Thousand and Five Hundred only) was exactly the remaining sale consideration to be payable to the 1st defendant and that was also available in the account of the respondents 1 and 2.

24. Immediately after the 1st defendant's Society loan was discharged, the 1st defendant should have come forward to get the balance amount of Rs.5,29,500/- (Rupees Five Lakhs Twenty Nine Thousand and Five Hundred only) from the respondents 1 and 2 and executed the sale deed. Having waited for few days, the respondents 1 and 2 had issued the legal notice and immediately thereafter, they filed the suit for specific performance as well.

25. At no point of time, the conduct of the respondents 1 and 2 fell short of their readiness and willingness in performing their part of contract. It is to be noted that the time is not the essence of the contract. However, even within three months time, the respondents 1 and 2 have taken all possible action in getting the sale deed.

26. The learned counsel for the appellant submitted that the respondents 1 and 2 had deposited the money only subsequent to the decree and that would show their financial incapability to meet the transaction. As shown already, the respondents 1 and 2 sanctioned with a bank loan of Rs.15,00,000/- (Rupees Fifteen Lakhs only) and the housing loan pending with the 1st defendant was discharged from the said loan. Since the loan was raised by the 1st and 2nd respondents from the Bank, the bankers will not normally disburse the amount to the borrowers, but would directly pay the same to the vendor through demand draft. Unless the 1st defendant had agreed to give a date for registering the sale deed, it would not be possible for the Bank to give the demand draft for a sum of Rs.5,29,500/- (Rupees Five Lakhs Twenty Nine Thousand and Five Hundred only) in her favour. Despite knowing that her loan was taken over by the State Bank of India and the title deeds were alone in the custody of the Bank, making false claim with the Society that she is eligible to get back the title deeds from the Society, no Bank will issue demand draft in favour of such person unless the 1st defendant agreed to come to the Sub Registrar Office and get the sale deed executed. Since the respondents 1 and 2 have availed bank loan and ready to give their consent for discharging the loan of the 1st defendant, the readiness and willingness on the part of the respondents 1 and 2 and the plaintiffs are shown to be beyond doubts.

27. Since the 1st defendant did not perform her part of contract and dragged the respondents 1 and 2 to the Court, the respondents have no other option except to raise some other finance and deposit the same in the Court. Even when filing the suit for specific performance, it is not necessary for the plaintiffs to deposit the sum. But it is sufficient if it is shown that the plaintiffs are always ready and willing to pay the balance sale consideration. In the case in hand, it was the 1st defendant vendor attempted to take unfair advantage through her conduct. Hence, the citation relied on by the learned counsel for the appellant reported in ***2019 (3) MWN (Civil) 724*** is not applicable to the facts of the case.

28. The learned counsel for the respondents relied on the judgment reported in ***2010 (6) CTC 901 (J.P.Builders and another vs. A.Ramadas Rao and another)*** and submitted that the readiness and willingness would imply that the person was prepared to carry out the terms of the contract. Readiness would refer to the financial capacity of the parties and the willingness would be its conduct. In the said case, it is held as under:

> ***9.*** *The words "ready" and "willing" imply that the person was prepared to carry out the terms of the contract. The distinction between "readiness" and "willingness" is that the former refers to financial capacity and the latter to the conduct of the Plaintiff*

wanting performance. Generally, readiness is backed by willingness.

10. *In N.**P.Thirugnanam v.Dr.R.Jagan Mohan Rao & Ors.**, 1995 (5) SCC 115, at para 5, this Court held:*

> *".....Section 16(c) of the Act envisages that Plaintiff must plead and prove that he had 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 those terms the performance of which has been prevented or waived by the Defendant. The continuous readiness and willingness on the part of the Plaintiff is a condition precedent to grant the relief of Specific Performance. This circumstance is material and relevant and is required to be considered by the Court while granting or refusing to grant the relief. If the Plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the Plaintiff is ready and willing to perform his part of the contract, the Court must take into consideration the conduct of the Plaintiff prior and subsequent to the filing of the Suit along with other attending circumstances. The amount of consideration which he has to pay to the Defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The Court may infer from the facts and circumstances whether the Plaintiff was always ready and willing to perform his part of the contract."*

11. *In **P.D'Souza v. Shondrilo Naidu**, 2004 (4) CTC 150 (SC): 2004 (6) SCC 649, paras 19 and 21, this Court observed:*

> *"It is indisputable that in a suit for Specific Performance of contract the Plaintiff must establish his readiness and willingness to perform his part of contract. The question as to whether the onus was discharged by the Plaintiff*

> *or not will depend upon the facts and circumstance of each case. No strait-jacket formula can be laid down in this behalf. The readiness and willingness on the part of the Plaintiff to perform his part of contract would also depend upon the question as to whether the Defendant did everything which was required of him to be done in terms of the Agreement for Sale."*

29. Despite the plaintiffs have taken the steps to get the sale deed executed, the failure was on the part of the 1st defendant. The learned trial Judge has rightly appreciated the evidence and held that the respondents 1 and 2 are entitled to get the relief of specific performance.

30. During the pendency of the suit, the 1st defendant died. The defendants 2 and 3 who are the sons of the deceased 1st defendant were impleaded as her legal heirs. Being the legal heirs of the deceased mother, they would not be aware of the unfair manner, in which, the 1st defendant has acted in avoiding to perform her part of contract. Even this Appeal Suit was filed by one of the sons, who is the 2nd defendant and the 3rd defendant did not object any decree of the trial Court. These facts would also show that there was no short fall in the conduct of the respondents 1 and 2 in performing their part of contract and they were always ready and willing and the trial Court has rightly granted the decree for specific performance in favour of the respondents 1 and 2. Hence, I find no reason for interference. **Thus, the points are answered against the appellant.**

In the result, this Appeal Suit is dismissed and the judgment and decree in O.S. No. 170 of 2008 on the file of the IV Additional District Court, Madurai, is hereby confirmed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vji

To

1. The IV Additional District Judge,
   Madurai.

2. The Section Officer,
   VR Section,
   Madurai Bench of Madras High Court,
   Madurai.

+1 CC to M/s.T.C.S. THILLAINAYAGAM, Advocate (SR-22012[F] dated 28/04/2022)

+1 CC to M/s.J. ANANDHAVALLI, Advocate (SR-22016[F] dated 28/04/2022)

A.S. (MD) No. 124 of 2020
28.04.2022

MGJ(24.05.2022) 13P 6C