



A.S.(MD)No.189 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 03.04.2023

DELIVERED ON : 21.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.189 of 2021
and C.M.P.(MD)No.8965 of 2022

Karuppaiah (died)
Mariyayee (died)

1.Vijaya

2.Muthuraman

3.Sutha

4.Kesavan

...Appellants / Defendants 3 to 6

Vs.

1.Uma Mageshwari

... 1st respondent / Plaintiff

2.Vijaya

3.Senthil

4.Muthulakshmi

5.Prahadhampal



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6.Kowsalya

7.Balasubramanian

8.Malathi

9.Prabhakaran

10.Prasath

... Respondents 2 to 10 /
Defendants 7 to 15

PRAYER: This Appeal Suit is filed under Section 96 of C.P.C. against the judgment and decree passed in O.S.No.14 of 2010, on the file of the Additional District Judge, Pudukkottai, dated 20.12.2019.

For Appellants : Mr.N.Balakrishnan

For Respondents : Mr.M.Karthikeya Venkatachalapathy for R1

Mr.M.Suriya Narayanan for R2 to R7, R9 & R10
No Appearance for R8

JUDGMENT

Aggrieved over the decree and judgment, decreeing the suit for specific performance, this Appeal Suit has been filed by the appellants.

2. For the sake of convenience, the parties are referred to herein, as per their own ranking before the Trial Court.



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3. The brief facts, leading to the filing of this Appeal, are as follows:-

3.1. The suit property originally owned by one Subbammal. She has bequeathed the property in favour of one Muruga Konar, Krishna Konar @ Kittu Konar and the first defendant, Karuppiyah Konar. Muruga Konar and his wife Rathinam died without any issues long back. Therefore, the entire suit property devolved on Krishna Konar @ Kittu Konar and the first defendant viz., Karuppiyah Konar. The son of Krishan Konar @ Kittu Konar viz., Veeraiah predeceased his father leaving behind his wife and children, who are the defendants 3 to 6. The first defendant Krishna Konar @ Kittu Konar and his wife (second defendant) were agreed to sell the property for a total consideration of Rs.10,50,000/- and executed a registered agreement for sale on 10.10.2007 and received a sum of Rs.2 lakhs as advance. Thereafter on 15.10.2007, again a supplementary agreement was executed and parties agreed to measure the property and in the event of excess land is available, the plaintiff has to pay a sum of Rs.140 per sq. ft. Similarly in the event, the land is lesser, then the agreed sale consideration has to be proportionality reduced at the rate of Rs.140 per sq.ft. On the date of agreement, a further sum of Rs.2 lakhs was also received. Thereafter, on



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30.10.2007 and 28.11.2007, a sum of Rs.1,00,000/- and Rs.50,000/- respectively also received by Krishna Konar @ Kittu Konar. Krishna Konar @ Kittu Konar and defendants 3 and 4 also signed as witnesses in the above document.

3.2. Though the time was agreed to complete the sale within five months, as there was some delay in measuring the property, the sale was not completed within five months. The plaintiff was ready to pay the balance sale consideration. However, the defendants 3 and 4 delayed the execution under the pretext that since Krishan Konar @ Kittu Konar under care and custody of the defendants 2 to 6 and he is not well, they will execute the sale deed after he became alright. In the meanwhile, Krishan Konar @ Kittu Konar died on 12.02.2008 and the legal heirs were assured that after his last rites and ceremonies are over, they will execute the sale deed. However, they have not come forward to execute the sale deed. Hence, the plaintiff's husband requested the defendants personally on 12.02.2008 to execute the sale deed. However, the defendants 3 and 4 demanded a further sum of Rs.3 lakhs. Therefore, the plaintiff has issued a legal notice dated 16.08.2008. The first defendant was ready to execute the sale deed. The defendants 2 to 6 were originally agreed to execute the sale deed, but after one month, they have sent a false reply. Hence, the suit for specific performance.



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4. The first defendant has filed a written statement admitting the execution of the agreement. However, he has not aware of the further payment made by the Krishna Konar @ Kittu Konar and he is always ready to execute the sale deed. He is not disputed the plaintiffs case.

5. Defendant No.3 has filed a written statement, which is adopted by defendants 2, 4, 5 and 6 admitting the relationship. It is the case of the third defendant that third defendant's husband one Veeraiah was the adopted son of Krishan Konar @ Kittu Konar. The suit property was enjoyed by the Karuppiah Konar, Muruga Konar and Krishna Konar @ Kittu Knoar jointly. At the relevant point of time, the first defendant was in need of fund for the family necessity and he decided to borrow the amount from the plaintiff's husband on interest at the rate of 2% p.a. and agreed to repay the amount within six months. Accordingly, at the request of the first defendant, an agreement was executed by the first defendant's brother Krishan Konar @ Kittu Konar. Accordingly, the document has been executed and the defendants 3 and 4 have also signed as witnesses only in the loan transactions. It is the further contention that on 10.10.2007 itself, the signature of the defendants 3 and 4 and Krishna Konar @ Kittu Konar obtained in a blank



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papers. According to them, the defendants 3 to 6 were not received any loan and only the first defendant has received the loan amount of Rs.2,00,000/-. The alleged agreement dated 15.10.2007 was also denied and the payment made on 30.10.2007 and 28.11.2007 said to have been received by the Krishna Konar @ Kittu Konar was also denied.

6. It is further stated in the written statement that the registered document came into existence only in the loan transaction and the signature obtained in the blank papers on the same day utilized to create the supplementary agreement dated 15.10.2007. Further it is the contention that defendants 3 and 4 alone signed as witnesses on 10.10.2007 and the other defendants have not signed as witnesses. Hence, the endorsement found in agreement dated 15.10.2007 was also created one and disputed the entire agreement. It is the further contention that they also filed a suit for partition in O.S.No.44 of 2009.

7. Based on the above pleadings, the trial Court has framed the following issues:

“1. Whether the plaintiff is entitled to the relief of specific performance as against the defendants in accordance with the sale agreements dated 10.10.2007 and 15.10.2007 as prayed for?”



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2. *Whether the plaintiff is entitled to the relief of specific performance only in respect of the share of the 1st defendant alone in the suit property?*

3. *Whether the defendants 2 to 6 did not agree to sell the suit property and whether they did not receive any advance amount from the plaintiff?*

4. *To what other relief?"*

8. On 24.08.2016, the trial Court has framed the following additional issues:

"1. Whether the deceased 1st defendant Karuppiah Konar and late Kittu Konar received Rs.1,00,000/- on 30.10.2007 and Rs. 50,000/- on 28.11.2007 in addition to the advance amount mentioned in sale agreements dated 10.10.2007 and 15.10.2007?

2. Whether late Kittu Konar and the defendants 2 to 6 who are his legal representatives are bound by the sale agreements dated 10.10.2007 and 15.10.2007 or whether the defendants 7 to 15 who are the legal representatives of the deceased 1st defendant alone are bound to execute the sale deed?"

9. On the side of the plaintiff, plaintiff's husband was examined as P.W.1 and 10 documents were marked as Ex.A1 to Ex.A10. During this appeal, Ex.A11 and Ex.A12-certified copy of the judgment and decree in O.S.No.44 of 2009 have been marked before this Court. On the side of the defendants 3 to 6, one witness was examined as D.W.1 and 7 documents were marked as Ex.B1 to Ex.B7 and C.W.1, the handwriting expert was also examined as Court witness and two documents



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were marked as Court Exhibits C1 and C2.

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10. Based on the evidence and materials, the trial Court decreed the suit for specific performance. Challenging the same, the present appeal came to be filed by the defendants 1 to 4 / appellants.

11. The main contention of the learned counsel appearing for the defendants 1 to 4 / appellants that the time agreed between the parties in the agreement is five months, whereas the legal notice has been sent after the period of five months that itself clearly shows that the plaintiff was not ready and willing to perform her part of the contract. It is the further contention of the learned counsel appearing for the defendants 1 to 4 / appellants that though time is not an essence of contract as far as the immovable property is concerned, specific time agreed in the agreement cannot be ignored altogether to assess the readiness and willingness on the part of the plaintiff.

12. It is the further contention of the learned counsel appearing for the defendants 1 to 4 / appellants that though the defendants 5 and 6 have filed a suit for claiming partition, the same was dismissed and as against the said judgment, they have not filed any appeal. The certified copy of the said judgment and



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decreed was marked as Ex.A11 and Ex.A12 before this Court and that will not absolve the plaintiff from proving the readiness and willingness in this case. It is the further contention that Ex.A2-registered sale agreement came into existence on 10.10.2007. Such being a position, there was no need for entering into the another agreement within five days on 15.10.2010 under Ex.A1, which is an unregistered one.

13. It is the further contention of the learned counsel appearing for defendants 1 to 4 / appellants that the handwriting expert has also examined the disputed signature found in Ex.A1 and found that the signature was not tallied. These facts clearly created a doubt about Ex.A1. Therefore, the alleged subsequent payment made on various dates on the basis of the endorsement found in Ex.A1 is also cannot be relied upon. Hence, it is the contention of the learned counsel appearing for the defendants 1 to 4 / appellants that the supplementary agreement-Ex.A1 has not been established and therefore, specific performance cannot be granted. It is the further contention of the learned counsel appearing for the defendants 1 to 4 / appellants that the plaintiff has not come to the witness box whereas her husband alone was examined. Therefore, the readiness and willingness cannot be inferred from the evidence of the husband. Hence, prayed



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for allowing of this appeal.

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14. In support his submission, he has relied upon the following judgments:

1. *V.Suresh Kumar Vs. A.Ramasamy* reported in **2020 (4) CTC 798**;

2. *Katta Sujatha Reddy & anr. Vs. Siddamsetty Infra Projects Pvt. Ltd. &*

Ors. reported in **2023 (1) MWN (Civil) 65**;

3. *Rajiah Nadar Vs. Manonmani Ammal* reported in **1999-1-L.W.536**;

4. *U.N.Krishnamurthy (Since Deceased) thr. L.Rs. Vs. A.M.Krishnamurthy*

reported in **2022 (2) MWN (Civil) 799**; and

5. *T.R.Murugesan Vs. S.Balakrishnan and others* reported in **2018 (6)**

CTC 56.

15. The learned counsel appearing for the plaintiff / first respondent would submit that Ex.A2 is a registered sale agreement executed by the first defendant and his brother Krishna Konar @ Kittu konar, wherein defendant Nos.3 and 4 stood as witnesses and an advance amount of Rs.2 lakhs has also been paid. Subsequently, an unregistered agreement was also came into existence on 15.10.2007, only for the purpose of measurement of the property and in the event, more extent is available, the parties agreed to pay the excess amount or to reduce the amount proportionality, in the event there is a lesser extent available on the



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ground. That document was also attested by defendants 3 and 4. In every stage, the defendants have taken different stand and the same cannot be permitted to go beyond the terms of the contract.

16. It is the further contention of the learned counsel appearing for the plaintiff / first respondent that Ex.A2 is the registered agreement for sale. Alleged loan transaction has not been established by defendant Nos.2 to 6. It is his further contention that the first defendant is also one of the brothers of Krishna Konar @ Kittu Konar, he has clearly admitted the execution and they are also ready to sell the properties. Only the legal heirs from the other brothers were taking a different stand, which has also not been established. The above conduct itself clearly shows that their intention is only to defeat the lawful agreement. The trial Court has analyzed the entire evidence. The plaintiff is always ready and willing to perform the part of her contract. Therefore, it is his contention that the appeal deserves to be dismissed. It is the further contention of the plaintiff / first respondent that under Section 120 of the Indian Evidence Act, 1872, the husband is the competent witness on behalf of the wife. Hence, prayed for dismissal of the appeal. In support of his submissions, he has relied upon a judgment in ***Shenbagavalli and another v. Kallaichelvi*** reported in ***2020 5 LW 673***.



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17. In the light of the above submissions, now the points arise for consideration in this Appeal Suit are as follows:

1. Whether the agreement dated 10.10.2007 was not intended for sale of property and result of loan transactions?
2. Whether the agreement dated 15.10.2007 is fabricated and a result of forgery?
3. Whether the plaintiff is not ready and willing to perform his part of contract?
4. Whether the plaintiff is not entitled to specific performance?
5. To what other relief, the plaintiff is entitled?

18. The relationship of the parties are not disputed. The suit properties originally bequeathed to the first defendant and his two brothers viz., one Muruga Konar and Krishna Konar @ Kittu Konar. The second defendant is the wife of Krishna Konar @ Kittu Konar and the third defendant is the daughter-in-law i.e., wife of the adopted son of Krishna Konar @ Kittu Konar. It is the specific case of the plaintiff that since one Muruga Konar has already died issueless, his share in the suit property devolved upon the two brothers viz., Krishna Konar @ Kittu



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Konar and the Muruga Konar and both of them agreed to sell the property for a total sale consideration of Rs.10,50,000/- and executed a registered sale agreement on 10.10.2007-Ex.A2 and received a sum of Rs.2 lakhs as advance. The execution of registered agreement is not disputed by the first defendant.

19. First defendant, who is one of the co-owner along with his brother Krishna Konar @ Kittu Konar, has in fact admitted the execution of the agreement for the sale of the suit property. Third defendant is one of the attesting witnesses in the above document Ex.A2. It is her stand that the first defendant was in need of funds, he approached the plaintiff's husband for a loan of Rs.2 lakhs to him and only at the request of the plaintiff's husband, the document came into existence. Hence, according to the defendants 3 to 6 Ex.A2-registered sale agreement is a result of loan transactions between the first defendant and plaintiff's husband. Except contending that it is only a loan transaction, no other materials whatsoever have been brought on record by the defendants to show that this agreement is not intended for sale of properties. Therefore, the contention of the defendants that Ex.A2-sale agreement came into existence in a loan transaction between the first defendant and plaintiff's husband is highly improbable. There was no reason as to why the third defendant and her father-in-law also signed in the document.



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Therefore, once document was registered on the file of Sub Registrar and the third defendant and her son also signed as witnesses, the defendants cannot go against the contents of the document by mere oral evidence.

20. It is also to be noted that the receipt of Rs.2 lakhs as advance amount on the date of Ex.A2, dated 10.10.2007, was not disputed. Though it is stated that it is only a loan transaction, payment has not been denied by the contesting defendants. Whereas the first defendant and his legal heirs impleaded later admitted the agreement for the sale of the suit property. The other specific contention of the plaintiff that supplementary agreement was also came into existence on 15.10.2007. Further, a sum of Rs.2 lakhs was received towards the sale consideration and it was agreed between the parties that property has to be measured and in the event any excess land is available, the plaintiff is agreed to pay a further sale consideration at the rate of Rs.140 per sq.ft. Similarly, if any lesser extent is found during the survey, the sale consideration has to be proportionally adjusted.

21. Further, it is the contention of the plaintiff that thereafter on 30.10.2007 and 28.11.2007, the amounts have been paid towards the further sale



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consideration. It is the specific defence of the defendants 2 and 3 to 6, with regard to Ex.A1, dated 15.10.2007 that they never executed such document and signature was obtained in blank papers on 10.10.2007 i.e., when the original registered sale agreement was executed. Thereafter, the same has been utilized to create a document on 15.10.2007.

22. It is relevant to note that the defendants 2 to 6 have taken a different stand in the pleadings and the evidence about Ex.A1-Agreement dated 15.10.2007. In the written statement, it is the specific plea of the defendants that on 10.10.2007 their signature was obtained in blank papers and the document has been created later. If really, the sale agreement has already registered on 10.10.2007, there was no reason as to why, the defendants have to sign in the blank papers on the same day. That itself clearly indicates that the defence set up by the defendants is highly improbable.

23. A suggestion was put by P.W.1 in support of his defence that while executing the sale agreement on 10.10.2007, signatures were obtained in blank stamp papers and ordinary papers not only from the defendants 3 and 4, but also from Krishan Konar @ Kittu Konar and thereafter, the same has been utilized to



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create the document styled as a supplementary document on 15.10.2007. The very suggestions put by P.W.1, clearly indicates that the signature found in Ex.A1 i.e., Agreement dated 15.10.2007 is that of the defendants 3 and 4 and one Krishna Konar @ Kittu Konar. This suggestion is in fact support the pleadings of the defendants in the written statement. Wherein, the third defendant even in the chief examination took a stand that signatures were obtained on 10.10.2007 when registered document was executed and the same was utilized later. Whereas the first defendant one of the brothers of Krishna Konar @ Kittu Konar has not disputed Ex.A1, dated 15.10.2007.

24. Having admitted the signature in the document in the chief examination, D.W.1, took a stand that those documents viz., the endorsements in Ex.A.1 are forged one. Having taken such a plea in the chief examination, she has admitted in the cross examination that she and her son Muthuraman viz., fourth defendant, have signed in the above document and however, she has gone as to the extent of saying that they have signed only in blank papers at the request of the plaintiff's husband. Therefore, having admitted the signature, the plea of forgery is highly improbable and therefore, the stand of the alleged forgery cannot be countenanced at all.



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25. One other interesting aspect to be seen in this matter, when D.W.1 have admitted all the signatures found in Ex.A1- agreement dated 15.10.2007, the said document has been sent for examination to the handwriting Expert-C.W.1 and he has examined all the signatures and compared the same and gave an opinion that there is a slight variation. In his cross examination, he has also admitted that variation also possible due to the age ailment. Therefore, he was not able to give definite opinion that the signatures are forged one.

26. It is curious to note that when the third defendant herself has admitted that they signed in the blank papers, only those signatures were sent to the handwriting Expert and it has not been compared with the admitted signature in Ex.A2-registered sale agreement for the reasons best known to the third defendant herself. Therefore, the handwriting Expert's evidence brought on record will not help the defendants in any manner since the very signature in the document itself has been admitted.

27. P.W.1 in his evidence has clearly spoken about the circumstances, in which Ex.A1 came into existence. On a perusal of Ex.A1, makes it clear that the parties have agreed to measure the properties and also pay the excess amount in



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the event there is excess land and reduce the sale consideration in the event there is a lesser land. Time is also agreed between the parties to complete the sale.

Further, a sum of Rs.2 lakhs has also been paid on the same day. That apart, further sale consideration of Rs.1,00,000/- was also received by Krishna Konar @ Kittu Konar on 30.10.2007 and a sum of Rs.50,000/- on 28.11.2007.

28. It is relevant to note that in Ex.A1, the first defendant is also a party to the document and he has not disputed the endorsement as to the further payment to Krishna Konar @ Kittu Konar. However, the defendants 3 to 6 disputed Ex.A1 on the ground that the signatures were obtained in blank papers on 10.10.2007 itself. It is relevant to note that if the signatures of all the witnesses were obtained on 10.10.2007, as contended by the defendants, all the signatures of the witnesses should have been found place in all the places including in the back side of the blank papers. Whereas only the third defendant and her son alone have signed as witnesses after receiving a sum of Rs.1 lakh on 30.10.2007. On 28.11.2007, the third defendant alone signed and her son was not signed. Therefore, the theory of signatures were obtained in the blank papers is highly improbable and cannot be countenanced. Accordingly, this Court holds that the defendants' theory that Ex.A1 is a fabricated one and forged does not hold any water.



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29. P.W.1 clearly spoken about the execution of document. Besides the first defendant, who is the brother of Krishna Konar @ Kittu Konar is also not disputed Ex.A1 and there is no serious denial about the subsequent payment also. In Ex.A1, though the time limit was fixed as five months, the sale was not completed within the five months period. It is the specific case of the plaintiff that even after measuring the properties, the defendant did not execute the sale under the pretext that Krishna Konar @ Kittu Konar was not well. In the meantime, he also died on 12.02.2008. The death of Krishna Konar @ Kittu Konar on 12.02.2008 is not disputed and it is also specifically stated that since the last rites and ceremonies would be performed, the defendants have requested some more time to execute the sale deed. However, as they failed to execute the sale, a legal notice was issued on 16.08.2008.

30. It is also the case of the plaintiff that he has only spent amount for obtaining a legal heir certificate of Krishna Konar @ Kittu Konar. His evidence in this regard is also not seriously disputed by the defendants. One of the brothers of Krishna Konar @ Kittu Konar and their legal heirs have not disputed about the execution of the document and sale of property. It is normal for such delay particularly when one of the executors died. Therefore, merely because the legal



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notice sent after five months period from the agreement, it cannot be said that the plaintiff was never ready and willing to perform the part of her contract. Substantial payment has been made on the date of agreement dated 10.10.2007- Ex.A2 and 15.10.2007- Ex.A1 and thereafter, as per the endorsement made on two different dates under Ex.A1, i.e., 30.10.2007 and 28.11.2007, totally the plaintiff has paid a sum of Rs.5,50,000/- within a period of five months. Thereafter, she also requested the defendants to execute the sale deed.

31. In the meantime one of the executors viz., Krishan Konar @ Kittu Konar was died. In such a situation, merely notice has been sent after the period of five months as agreed in the contract, it cannot be said that the plaintiff was never ready and willing to perform her the part of the contract. The very conduct of the defendants from denying the execution of document from the very beginning and in every stage taking a different stand about the execution, indicates that the defendants 2 to 6 have not come to this Court with clean hands. Further, the filing of suit by the third defendant, claiming right on the basis that her husband was a adopted son of one Krishnan Konar @ Kittu Konar, which was dismissed by the trial Court, clearly indicate the defendant's conduct only in order to defeat the valid agreement. The judgment copy of the suit was filed as Ex.A11. The said



judgment is also not challenged by way of an appeal. All these facts clearly show that the defendants have only for the sake of defeating the agreement executed by them, set up a false defence.

32. With regard to the contention of the learned counsel that the plaintiff's husband evidence is not sufficient to prove the readiness and willingness, it is useful to refer the judgment of this Court in ***Rajiah Nadar Vs. Manonmani Ammal*** reported in ***1999-1-L.W.536***, wherein this Court has held as follows:

“It is needless to point out that in our society husband and wife share a fiduciary relationship and even now all transactions on behalf of womenfolk in a family are carried on only by the menfolk, especially the husband in the case of wife. But it is also equally true that the relationship of husband and wife is not to be treated as an exception to the mandatory requirement under Section 16(c) of the Act. It would be open to and also the duty of the plaintiff to plead and prove the reasons for the non-examination of the plaintiff.”

33. On a perusal of the above judgment, it is seen that this Court has held that the relationship of husband and wife is not to be treated as an exception to the mandatory requirement under Section 16(c) of the Act. This Court in fact directed the parties to establish the readiness and willingness. In the above judgment, this



Court has not held that either the husband or the wife cannot give evidence in a suit for specific performance. Therefore, the above judgment cannot be applied.

34. It is also relevant to note that this Court in *Shenbagavalli and another v. Kallaichelvi* reported in **2020 5 LW 673**, in paragraph 21, has held as follows.:

"21. For close to a century and a half, Courts in India have generally accepted the view that a spouse is a competent witness for the other spouse, though without raising a pointed issue on the possibility of Sec.120 breaching best evidence rule. See: T. Rangaswami. v. T. Aravindammal [AIR 1957 Madras 243], K. Saroja Vs Valliammal Ammal [1996-II-MLJ 199], T.J Ponnen v M.C Varghese [AIR 1967 Kerala 228], Kurella Naga Druva Vudaya Bhaskar Rao v Galla Jankiamma [(2009) 6 ALT 164], Muralidhar Pinjani v Sheela Tandon of [(2007) 3 MP LJ 506], Sant Footwear v Daya Bindra [2014 AIR CC 1154] to mention a few. A harmonious and a literal interpretation of Sec.120 with the rest of the provisions of the Evidence can only lead to a position that the spousal competency granted under it is unrestricted, and this has stabilized firmly as he generally accepted view. However, the need for subjecting the spousal competence under Sec.120 to the rule of best evidence requires serious consideration, and it cannot be ignored. Even the Law Commission in its 69th Report did not discuss this point. Now the legislature may have to revisit the provision and the prudence of closing the gate for hearsay, something J.B. Norton had suggested in his 1867 treatise, though in a slightly different context."



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As the evidence of P.W.1- husband of the plaintiff, who is also aware of the every transactions and contract from the very beginning, it cannot be said that he is incompetent to depose on behalf of his wife.

35. In *V.Suresh Kumar Vs. A. Ramasamy* reported in **2020 (4) CTC 798** this Court has held that the readiness and willingness has to be proved in evidences and in the absence of the same, specific performance cannot be granted. Absolutely there is no dispute on the proposition.

36. In *Katta Sujatha Reddy & anr. Vs. Siddamsetty Infra Projects Pvt. Ltd., & Ors.*, reported in **2023 (1) MWN (Civil) 65**, the Hon'ble Apex Court has held that when there was a categorical stipulation of a condition in contract and the same was breached, the purchaser cannot claim equity to escape said breach. The Hon'ble Apex Court considering the fact that the parties agreed to pay the sale consideration within three months, failing which advance amount to be forfeited, has held that consequences for non payment of sale consideration without stipulated time and moratorium fixed on enhancement establish that it was intention of parties to complete the contract within a fixed time and therefore, held that time was an essence of contract.



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37. Admittedly, in this case, no such stipulation agreed between the parties except contending that balance amount should be paid and sale should be completed within 5 months. The plaintiff established the fact that defendants are somehow or other has not come forward to measure the property, in the meanwhile one of the executors died and there was some delay, therefore it cannot be said that merely on the basis of such delay in completing the sale within the agreed period defendants cannot take advantage to defeat the right of the plaintiff.

38. In *T.R.Murugesan Vs. S.Balakrishnan and others* reported in **2018 (6) CTC 56**, the Division Bench of this Court has held there was no explanation on the side of the plaintiff for delay in issuing legal notice, after time fixed for performance and no explanation for delay in filing the suit after reply notice, specific performance cannot be granted. The above judgment is also not applicable to the facts of this case as discussed above. In this case, the plaintiff has clearly explained the reasons for delay in issuing the legal notice and one of the executors also died in the meanwhile.



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39. Considering all these facts and also considering the fact that the defendants have took a false plea of forgery which is also found to be false and their conduct itself were to defeat the validly executed the agreement, this Court is of the view that the mere delay, particularly when the defendants are bent upon denying the valid rights created under the contract, will not disentitle the plaintiff from enforce the contract. Accordingly, all the points are answered.

40. In the result, this Appeal suit is dismissed, confirming the decree and judgment in O.S.No.14 of 2010, passed by the Additional District Judge, Pudukkottai, dated 20.12.2019. No costs. Consequently, connected Miscellaneous Petition is closed

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NCC : Yes /No

Index : Yes/No

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To

- 1.The Additional District Judge, Pudukkottai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Judgment in
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21.04.2023