



*S.A.(MD).No.448 of 2017*

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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.12.2023**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.448 of 2017

and

C.M.P.(MD)No.9447 of 2017

- 1.M.Ganesan (Died)
- 2.G.Radha
- 3.G.Vijayalakshmi
- 4.G.Kowsalya
- 5.G.Rameshkumar

... Appellants

*(Appellants 2 to 5 are brought on record as LRs of the deceased sole appellant, vide Court order, dated 05.08.2021, made in CMP(MD)No.3535 of 2021 in SA(MD)No.448 of 2017)*

/Vs./

Thangamani

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 02.08.2017, made in A.S.No.23 of 2016 on the file of the Principal Subordinate Judge, Karur, by confirming the Judgment and Decree dated 22.07.2016 made in O.S.No.559 of 2011 on the file of the Principal District Munsif Court, Karur.



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For Appellants : Mr.R.Devaraj  
For Respondent : Mr.K.Govindarajan  
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### **JUDGMENT**

This suit is filed for specific performance to enforce the sale agreement, dated 04.04.2008, which is marked as Exhibit A1. The plaintiff is the appellant herein and the defendant is the respondent herein. Both the suit and the first appeal were dismissed and it is concurrent finding. For the sake of convenience, the ranking of the parties in the suit is followed in the judgment.

2. The contention of the plaintiff was that the said sale agreement was executed before the elders in the village. The defendant had filed a written statement denying the execution of the said sale agreement specifically denied the signature affixed in the alleged sale agreement. Hence the plaintiff has filed I.A.No.1193 of 2013 to compare the signature of the defendant which was executed in the Exhibit A1. The Trial Court allowed the application. However, the Judge declined to send



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it to forensic for comparing the signature, but had compared it with the signature affixed in vakalat and had held that the signature is not coinciding.

3. The next contention of the plaintiff was that on the date of hearing there was a boycott by the Advocates, hence there was no effective hearing. The contention of the plaintiff is that of the plaintiff is that the Appellate Court did not consider these pleas but has confirmed the judgment and decree of the Lower Court. Aggrieved over the same, the present second appeal is preferred.

4. The prayer in the suit is for specific performance wherein the sale agreement was executed on 04.04.2008. In the agreement, the plaintiff had paid the entire sale consideration of Rs.35,000/- and the sale agreement states that the sale should be executed within five months. It is an admitted fact that the plaintiff did not send any notice showing the readiness and willingness to execute the sale deed as well as had not issued any pre suit notice. The suit was filed on 30.08.2011, until the



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filing of the suit, the plaintiff had not issued any notice. Absolutely there was no whisper of any indication that the plaintiff was ready and willing to execute the sale deed.

5. Therefore, even though no proper opportunity was granted to the plaintiff as claimed by the plaintiff, the plaintiff has no case on merits at all. Therefore, this Court is not inclined to entertain this second appeal. Hence, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**12.12.2023**

Index : Yes / No

NCC : Yes / No

Tmg



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**TO:**

1. Principal Subordinate Judge, Karur.
2. Principal District Munsif Court, Karur.
3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**S.SRIMATHY, J.**

Tmg

Judgment made in  
**S.A.(MD)No.448 of 2017**

Dated:  
**12.12.2023**