



S.A. No.649 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.03.2024

DELIVERED ON :15.03.2024

CORAM:

THE HON'BLE MR. JUSTICE P.B. BALAJI

S.A. No.649 of 2019
and CMP Nos.11762 and 11763 of 2019

Nagarajan

.... Appellant

Versus

Selvi @ Sellammal (died)

1.Kanagaraj
2.Santhi @ Valarmathi
3.Vasanthi @ Vijayamala

... Respondents

Second Appeal filed under Section 100 of the Civil Procedure code, against the decree and judgment passed in A.S.No.22 of 2015 dated 31.07.2018 on the file of Principal District Court, Tiruvarur, confirming the judgment and decree dated 07.10.2014 in O.S.No.47 of 2011 on the file of Subordinate Court, Mannargudi.

For Appellants

: Mr.Sharath Chandran

For Respondents

: Mr.S.Chandrasekharan



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JUDGMENT

The plaintiff, in a suit for specific performance, having suffered concurrent findings before the trial Court as well as the first appellate Court, is the appellant herein. The parties are described as per their litigative status in the suit.

2. The brief and material facts, that are necessary for deciding the above Second Appeal, are as follows:

(i) The plaintiff entered into a registered agreement of sale on 04.12.1997 with M.Loganathan for purchase of the suit property, on an agreed sale consideration of Rs.2,00,000/-. Under the said agreement, the sale deed had to be executed on payment of balance sale consideration of Rs.50,000/-, Rs.1,50,000/- having been paid as advance even on the execution of the said agreement, within one year period. It is his further case that at the fag end of the one year period viz., on 10.11.1998, a



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supplementary agreement was entered into and the entire balance consideration of Rs.50,000/- was paid by the plaintiff to the said M.Loganathan and the said M.Loganathan had handed over possession of the suit property to the plaintiff. In the said supplementary agreement, it was also agreed that as and when the plaintiff wanted registration of the sale deed, the defendant would co-operate and do the needful. It is also claimed that the defendant executed a registered general power of attorney in favour of the plaintiff on 14.12.1998, empowering the plaintiff to deal with the property in any manner that the plaintiff may deem fit and proper. The further case of the plaintiff is that in furtherance of the above documents as well as registered power of attorney, the plaintiff has also let out the suit property to a tenant and has been collecting/enjoying the rents.

(ii) On 05.04.2011, the plaintiff issued a pre-suit notice, calling upon the legal heirs of M.Loganathan viz., the defendants in the suit to come forward to register a sale deed in favour of the plaintiff on 20.04.2011. The said notice was received by the defendants and a reply was sent with all untenable allegations, thus, constraining the plaintiff to file the suit.



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3. The defendants resisted the suit claim by filing a written statement, contending that M.Loganathan, under whom, they were claiming, had only borrowed money from the plaintiff and in all Rs.70,000/- had been borrowed and at the time of borrowing money from the plaintiff, the plaintiff had obtained signatures of the defendants' husband and father respectively.

4. It is the further case of the defendants that the power of attorney was executed only to take care of the property since M.Loganathan was going out of town and taking advantage of the signatures obtained from the said M.Loganathan, the plaintiff had brought about the sale agreement and caused great mental agony to M.Loganathan, which, in fact, resulted in his unfortunate demise. The plaintiff has no valid sale agreement in his favour and it is a fabricated document brought about to grab the valuable suit property from the defendants.

5. The defendants also denied the alleged payment of Rs.2,00,000/- on



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various dates and also stated that the suit was barred by limitation since for 13 years, the plaintiff had not taken any steps to seek enforcement of the alleged agreement.

6. The trial Court found that (i) the plaintiff was not ready and willing to conclude the transaction; (ii) the extension agreement dated 10.11.1998 marked as Ex.A.2 was a sham document; (iii) the suit was barred by limitation in view of Article 54 of the Limitation Act and (iv) on the ground that the plaintiff has not established to have been in possession of the suit property, dismissed the suit.

7. On appeal, the first appellate Court held that even the sale agreement Ex.A.1 dated 04.12.1997 was not proved and confirmed the findings of the trial Court with regard to the plaintiff's lack of readiness and willingness. However, the first appellate Court found the suit to be in time and not hit by Article 54 of the Limitation Act. However, the first appellate Court, noticing that the prices in the locality had gone up multi fold, held, it would be inequitable to grant the discretionary relief of specific performance



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in favour of the plaintiff and for the above reasons, the first appellate Court dismissed the appeal, thereby, confirming the judgment and decree of the trial Court.

8. The plaintiff, aggrieved by the concurrent findings rendered by the trial Court as well as the first appellate Court, has preferred the above Second Appeal.

9. On 04.06.2019, the Second Appeal was admitted on the following substantial questions of law:-

a) *Whether the judgments and decrees of the Courts below suffer from manifest perversity as they reject Ex.A.1 and Ex.A.2 even though these agreements have been unambiguously admitted by the defendants in their evidence?*

b) *Whether the Courts below have committed a manifest error in applying the first limb of Article 54 of the Limitation Act, when admittedly, a reading of Ex.A.2 would show that the case was one under the second*



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limb?

c) Consequently, whether the courts below have gravely erred in returning a finding that the suit was barred by limitation?

d) Whether the courts below have misdirected themselves in exercising their discretion to grant/withhold specific performance ignoring the fact that the entire sale consideration had been paid by the appellant and he had been in enjoyment of the property for over a decade?

e) Whether the Courts below were right in refusing specific performance on the ground of perceived delay contrary to the law laid down by the Division Bench of the Kerala High Court in John Thomas vs Joseph Thomas 2001 1 KLT 245 holding that where a delay has been acquiesced in by the vendor of immovable property and no notice terminating the contract had been given, the court will decree specific performance?

f) Whether the courts below have committed a



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jurisdictional error in applying the principles under Section 20 of the Specific Relief Act, 1963 on an erroneous supposition that an increase in the price of property disentitles the plaintiff to equitable relief?

10. I have heard Mr.Sharath Chandran, learned counsel for the appellant / plaintiff and Mr.S.Chandrasekaran, learned counsel for the respondents 1 to 3 viz., defendants. I have also gone through the pleadings, oral and documentary evidence adduced by the parties before the trial Court and the judgments of the trial Court as well as the first appellate Court.

11. The learned counsel for the appellant/plaintiff Mr.Sharath Chandran would bring to my notice that the suit has been found by the first appellate court to be in time and the finding in that regard, to the contra rendered by the trial Court, was set aside, against which, there is no further challenge or cross objection also preferred by the respondents.

12. This apart, learned counsel for the appellant/plaintiff would also state that the trial court had found the sale agreement to be true, but,



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however, strangely, the first appellate court has rendered a finding that the sale agreement has not been proved, which is contrary to the pleadings as well as the oral and documentary evidence available on record.

13. Mr.Sharath Chandran, learned counsel for the appellant/plaintiff would also take me through the pre-suit exchange of notices to bring out the inconsistent stand taken by the defendants with regard to the plaintiff's possession of the suit property as well as the validity of the agreements viz., Exs.A.1 and A.2. Learned counsel would also take me through the cross examination of D.W.1, where, the third defendant, who has deposed as D.W.1, has categorically admitted the execution of the registered agreement in Ex.A.1 and would state that in the light of the said admission, coupled with the pleadings before the Court and also the pre-suit notice and reply notice, the courts below have concurrently erred in denying the relief to the plaintiff. Mr.Sharath Chandran, learned counsel for the appellant/plaintiff would place reliance on the following decisions:-



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i) *Munishamappa vs M.Rama Reddy and Others*
reported in [(2023) 6 MLJ 553 (SC)]

ii) *Rathnavathi and Anr vs Kavita Ganashamdas*
reported in [(2015) 5 SCC 223]

iii) *John Thomas and Ors vs Joseph Thomas and Ors* reported in (2000 SCC Online Ker 96)

iv) *K.Prakash vs B.R.Sampath Kumar* [(2015) 1 SCC 597]

v) *Chokkammal and 3 others vs K.Balraj* reported in (2008 (5) CTC 690)

vi) *Lakshmi Ammal vs Tulkarinai* reported in 69 Law Weekly 770

14. Mr.Sharath Chandran, learned counsel for the appellant would therefore pray for the Second Appeal being allowed, answering all the substantial questions of law in favour of the appellant.

15. Mr.S.Chandrasekharan, learned counsel for the respondents would first and foremost contend that the trial court as well as the first appellate Court have rendered concurrent finding based on material evidence available on record and therefore, this Court cannot interfere with the same under

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Section 100 of Code of Civil Procedure.

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16. Learned counsel for the respondents would also take me through the averments in Ex.A.2 in order to support his argument that the plaintiff was never ready and willing. According to the learned counsel for the respondents, Ex.A.2 was entered into only because of the reason that the plaintiff was not in a position to mobilise the balance sale consideration and therefore, according to the learned counsel for the respondents, the plaintiff, on the face of his own documents, was not ready and willing. Thus, according to the counsel for the respondents, there was absolutely no infirmity or irregularity committed by the first appellate Court, in dismissing the suit for Specific Performance.

17. Having considered the submissions advanced on either side, I proceed to decide the above second appeal on the substantial questions of law that have been framed.

18. Exchange of notices by the parties, prior to the filing of the suit,



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assumes great significance in the present case. The plaintiff had caused a lawyer notice dated 05.04.2011, which has been marked as Ex.A.4. To the said notice, the defendants have issued a very lengthy and elaborate reply dated 11.05.2011, which has been marked as Ex.A.5. In Ex.A.4 notice, the plaintiff merely called upon the defendants, being the legal representatives of the deceased, M.Loganathan to come forward to execute a registered sale deed, referring to the averments in Ex.A.2 extension of agreement, in furtherance of Ex.A.1 sale agreement. In the said notice, the plaintiff has specifically averred that the deceased, M.Loganathan had handed over possession of the suit property to the plaintiff and that the plaintiff has been in enjoyment of the same right from November, 1998.

19. To the said notice, the defendants have sent a reply on 11.05.2011 vide Ex.A.5. In the said notice, the defendants, apart from denying the execution of both Exs.A.1 and A.2 agreements, have strangely stated that M.Loganathan had borrowed a sum of Rs.70,000/- on various dates in December 1997 from the plaintiff and all the borrowings were jotted down in a hand note in the plaintiff's own handwriting and that having lent

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Rs.70,000/- alone to M.Loganathan, the plaintiff harassed M.Loganathan (the then owner) and also forcibly got possession of the suit property by exercise of coercion and fraud, as a result of which, M.Loganathan's health suffered a serious set back and he also passed away on 24.08.1999. It is further stated that the plaintiff was in possession of the property only as a lender of money and the defendants were actually the owners and thus, the plaintiff's demand for registration of the sale deed was turned down.

20. Thus, from the above, I am unable to see that execution and registration of the sale agreement Ex.A.1 was stoutly and totally denied, equally the extension of supplementary agreement Ex.A.2 has also been denied. However, the fact that the plaintiff was in possession of the suit property is admitted, though it is the allegation of the defendant that the plaintiff, by exercise of coercion and threat, entered into the suit property.

21. The trial Court, unfortunately, lost sight of the admitted case of the defendants themselves that the plaintiff was in possession and proceeded to erroneously find that the plaintiff had not proved his possession of the



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property. Even, insofar as the limitation, the trial Court relied on Article 54 of the Limitation Act and held the suit to be barred by limitation. However, the said finding was rightly set aside by the first appellate Court and the suit was found to be filed in time.

22. Insofar as the sale agreement Ex.A.1, though in the reply notice, the defendants have chosen to stoutly deny the said sale agreement, in the written statement as well they have toed the same line as taken in the reply notice and denied the agreement alleged to be executed by late M.Loganathan.

23. However, during trial, the third defendant/Shanthi, who was examined as D.W.1, has virtually given up the defence taken in the written statement. As rightly pointed out by the learned counsel for the appellant, during the cross examination, the third defendant has admitted that the agreement was entered into by her father and that the signatures found in Ex.A.1 agreement were only that of her father. She also admitted the fact that the agreement of sale was registered on the file of Mannargudi Sub

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Registrar Office in Document No.192/97. She also admitted to the averments which are contained in the said Ex.A.1 agreement. She also admits the averment set out in Ex.A.2 supplementary agreement and that it was entered into, to extend the time for the parties to complete the sale transaction. She has further admitted that in Ex.A.2 agreement also, her father has signed and mother has witnessed the same along with her brother Kangaraj. Virtually, I find that the third defendant had admitted to all the suggestions put to her by the learned counsel for the plaintiff, excepting for denying the suggestion that the defendants have suppressed the truth in order to deny relief to the plaintiff.

24. Unfortunately, both the courts below have completely lost site of these valuable admissions of the third defendant, who alone was examined on the side of the defendants. In fact, the trial Court, having found that Ex.A.1 agreement was true and genuine, disbelieved Ex.A.2 supplementary agreement, which too, has been admitted by the third defendant, while being examined as D.W.1.



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25. In the case of *Rathnavathi and Anr vs Kavita Ganashamdas*, reported in [(2015) 5 SCC 223], the Hon'ble Supreme Court, while dealing with limitation for filing the suit for specific performance, referring to Article 54 of the Limitation Act, held that when there is no fixed date of performance, then, limitation starts only from the date when the plaintiff had notice of refusal of performance by the defendants. In the present case also, though time limit was fixed under Ex.A.1, under Ex.A.2, when the balance sale consideration was paid and plaintiff was also put in possession of the suit property, no time was stipulated for completing the transaction. Therefore, Limb-II to Article 54 would come into play and apply to the facts of the present case and in view of the refusal by the defendants vide reply notice dated 11.05.2011, the suit has been filed within three years thereafter and in fact, immediately thereafter and therefore, the suit for specific performance has been filed in time.

26. The next issue is with regard to possession of the suit property. It is the specific case of the plaintiff that under Ex.A.2, on payment of the balance sale consideration of Rs.50,000/-, the plaintiff was put in possession



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by M.Loganathan. However, even in the pre-suit notice, the earliest instance, the defendants have admitted that the plaintiff is in possession of the suit property, though not under the agreement of sale, but, only under a loan transaction. According to the defendants, even in the pre-suit notice, the plaintiff obtained forcible possession of the suit property. However, the defendants have not taken any steps whatsoever to recover possession of the suit property from the plaintiff, who, according to them, took possession forcibly and illegally. Admittedly, the defendants have not even lodged a police complaint, leave alone, filing a suit for recovery of possession from the plaintiff. The defendants have categorically admitted the plaintiff's possession and it only probablises the execution of Ex.A.2 extension agreement. Moreover, D.W.1 has also admitted to execution of Ex.A.2 agreement by her father. Thus, the plaintiff's possession is found to be under the extension of the agreement of sale alone and not as a trespasser, as alleged by the defendants.

27. The next issue that needs specific attention is with regard to readiness and willingness of the plaintiff. Admittedly, the plaintiff has



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filed the suit only in the year 2011 for specifically enforcing an agreement dated 04.12.1997, along with an extension agreement dated 10.11.1998. As already discussed, there is no difficulty with regard to limitation and the plaintiff cannot be shut out of Court on the ground of limitation. However, at the same time, in a suit for specific performance, the main criteria is pleading and proof with regard to readiness and willingness, thereby, entitling the plaintiff to the equitable and discretionary relief of specific performance.

28. This is a very peculiar case. The suit for specific performance is admittedly not barred by limitation, despite being filed after a lapse of 12 ½ years from the date of supplementary agreement dated 10.11.1998. Normally, readiness and willingness and limitation would go hand to hand. Applying the two limbs of Article 54 of the Limitation Act, in the first limb, whenever there is a specific time agreed upon in the agreement, then, that would be the starting point of limitation, however, when there is no time agreed upon between the parties, the starting point of limitation would be the date of the plaintiff noticing refusal on the part of the defendants. Here,



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admittedly, the agreement was not between the plaintiff and the defendants.

The plaintiff had entered into agreement under Ex.A.1 and also supplementary agreement Ex.A.2 with M.Loganathan, who was not alive, on the date of filing of the suit.

29. “Readiness and willingness” is not defined under the statute viz., Specific Relief Act. However, law is now well settled on this aspect of “readiness and willingness”. The plaintiff, who approaches the Court, seeking specific performance, should show that he has always been ready and willing to perform his part of the contract i.e., unfulfilled obligations under the agreement of sale, at all relevant points of time, In this case, admittedly, according to the plaintiff, nothing further needs to be done on his part. He has not only paid the entire sale consideration, but he has also been put in possession of the suit property. Thus, the onus is only on the defendants to execute and register the sale deed in favour of the plaintiff. Therefore, viewed from this angle, the mandate of Section 16(c) of Specific Relief Act, 1963 may not strictly apply to the plaintiff.



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30. In fact, I have already discussed in detail that the extension agreement is true and the suit has been filed in time and further, the plea raised by the defendants that the plaintiff forcibly took possession cannot be true and in all probabilities, the plaintiff was put in possession only by the original vendor, M.Loganathan. The admissions of D.W.1/the third defendant also does not advance the cause of the defence set up in the pre-suit notice and also continued into the written statement before the trial Court. Thus, it is not a case, where the delay of 13 years can be put against the plaintiff to deny the relief of specific performance.

31. Learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Munishamappa vs M.Rama Reddy and Others*** reported in **2023 6 MLJ 553**, where, the Hon'ble Supreme Court has held that when the owners have received the full consideration and have also transferred possession of the property in question, to the plaintiff, then, the other defences would not be available to them and that even the issue of readiness and willingness, on the part of the appellant, would not be relevant. This is the position because under section



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16(c) of the Specific Relief Act, 1963, “readiness and willingness” is limited only to the unfulfilled obligations cast upon the plaintiff under the agreement of sale. Here, under Ex.A.2, the entire balance sale consideration has been paid and the plaintiff has been put in possession of the suit property. The admission of the third defendant, in cross examination, would virtually tilt the balance of the case in favour of the plaintiff.

32. In *John Thomas and Ors vs Joseph Thomas and Ors* reported in **2000 SCC Online Ker 96**, the Division Bench of the Kerala High Court followed the ratio laid down in *Erlanger vs Sombrero Phosphate Co (1878) 3 App. Cas. 1218* that where the delay in payment has been acquiesced by the vendor of immovable property and no notice terminating the contract has been given, the court will decree specific performance, notwithstanding a stipulation to the effect that time is the essence of the contract, as long as the circumstances are in a manner or such as to excuse the failure of the plaintiff to complete the transaction. In *Erlanger's case*, 'delay' was discussed by the Hon'ble Court and it was held that the delay has two aspects and the acquiescence is also a factor that has to be considered by



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the Court. Though the learned counsel for the respondents Mr.S.Chandrasekaran, would submit that the plaintiff had admitted inability to pay the balance sale consideration, while entering into Ex.A.2 supplementary agreement and therefore, 'readiness and willingness' on the part of the plaintiff has to be negated, however, applying the ratio laid down by the Hon'ble Division Bench of Kerala High Court, mere fact that the deceased M.Loganathan entered into a supplementary agreement, extending time for payment after receiving the entire balance sale consideration, would clearly amount to acquiescence on his part. In fact, I find that there is no delay on the part of the plaintiff in payment of the balance consideration also, for the simple reason that under Ex.A.1 agreement, one year time was fixed, which ended only on 03.12.1998. However, as early as on 10.11.1998, the balance sale consideration of Rs.50,000/- has been paid and the plaintiff was also put in physical possession of his property, which is evidenced from the terms of the supplementary agreement. Thus, even in the present case, there is absolutely no delay on the part of the plaintiff and even otherwise, by extending time by executing Ex.A.2 supplementary agreement, time has been extended



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sine-die and in such circumstances, I am unable to countenance the argument of the learned counsel for the respondents that the conduct of the plaintiff should be viewed from Ex.A.2 covenants.

33. The learned counsel for the appellant, Mr.Sharath Chandran would also place reliance on the decision of this Court in ***Chokkammal and 3 others vs K.Balaj reported in 2008 5 CTC 690***, where, this Court falling back on Section 10 of the Specific Relief Act, dealing with entry into possession of the property, when claimed to be unlawful and whether the relief of Specific Performance could be denied, held, when the entire sale consideration had also been paid, it was not possible to attribute grave misconduct on the part of the plaintiff to deny him the relief of specific performance and in fact, further held that it would be inequitable to deny the relief of specific performance in view of Section 10 of Specific Relief Act.

34. The facts of the present case are almost identical to the facts of the case before this Court in ***Chokkammal's case***. Further, in the present case, as I have already discussed, though the defendants have claimed that the



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plaintiff forcibly entered into the property even as early as on 11.05.2011, viz., by their reply notice in Ex.A.5, the defendants have chosen to remain in deep slumber and took absolutely no step whatsoever towards recovering the property that has been forcibly occupied by the plaintiff. Therefore, the ratio laid down by this Court in ***Chokkammal's case*** would squarely apply to the facts of the present case.

35. Learned counsel for the appellant, Mr.Sharath Chandran would also place reliance on the decision of the Hon'ble Supreme Court in the case of ***K.Prakash vs B.R.Sampath Kumar*** reported in (2015) 1 SCC 597, where the Hon'ble Supreme Court held that escalation and value of the property is not a ground to deny the relief of specific performance.

36. Per contra, Mr.S.Chandrasekaran, learned counsel for the respondents would place reliance on the decision of the Hon'ble Supreme Court in the case of ***Nazir Mohamed vs J. Kamala and Others*** reported (2020) 19 SCC 57 and in the case of ***Desh Raj and Others vs Rohtash Singh*** reported in (2023) 3 SCC 714, seeking to dismiss the Second Appeal,



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warranting no interference in the concurrent findings.

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37. In *Nazir Mohammed's case*, [(2020) 19 SCC 57], the Hon'ble Supreme Court, in fact, summarised the principles regarding interference by the High Court under Section 100 of Code of Civil Procedure and held that though the general rule is that the High Court would not interfere with concurrent findings, however, the said Rule is not an absolute Rule. The exceptions that have been set out by the Hon'ble Supreme Court are (i) where the courts below have ignored material evidence or acted on no evidence (ii) the courts had drawn wrong inferences from proved facts by applying law erroneously; and (iii) courts have wrongly cast the burden of proof.

38. In my considered opinion, both the (i) and (ii) above would squarely apply to the facts of the present case and the courts below have not only arrived at findings, which are ignoring the material evidence available on record, but also coming to wrong conclusions despite admitted facts and for also having applied the law erroneously.



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39. In *Desh Raj's case (2023) 3 SCC 714*, the Hon'ble Supreme Court, in a suit for specific performance, while dealing with whether time was essence of contract, held that the Court should bear in mind the clear intention of the parties to treat time as the essence of the contract and whether there was any undue delay in instituting the suit, in which case, the relief of specific performance should not be granted.

40. Here, admittedly, under Ex.A.2 supplementary agreement, no time was fixed for concluding the contract by executing and registering the sale deed, which was the only obligation remaining, on the part of the plaintiff. Therefore, the facts of the case before the Hon'ble Supreme Court would not apply to the facts of the present case.

41. For the foregoing reasons and discussions, I deem it necessary to interfere under Section 100 of Civil Procedure Code and the substantial questions of law are answered in favour of the appellant.



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42. In the result, the judgment and decree of the first appellate Court/Principal District Court, Tiruvarur in A.S.No.22 of 2015 dated 31.07.2018, confirming the judgment and decree of the trial court/Subordinate Court, Mannargudi in O.S.No.47 of 2011 dated 07.10.2014 are set aside and the Second Appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

43. The defendants shall execute and register a sale deed in favour of the appellant/plaintiff within a period of eight weeks from the date of receipt a copy of this judgment.

15.03.2024

Index: Yes/No
Speaking Order/Non-Speaking Order
sr

To

1. The Principal District Court, Tiruvarur,
2. The Subordinate Court, Mannargudi
3. The V.R.Section, High Court, Chennai.

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sr

Pre-Delivery Judgment
in S.A.No.649 of 2019

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