



S.A. No.553 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

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1. Murugesan
2.Arumugam

... Appellants/Appellants/Plaintiffs

Vs

Elumalai (Died)
1.Sasi Kumar
2.Chandran
3.Devaki
4.Parameswari
5.Usha Rani
6.Saritha

... Respondents 1 to 6/Respondents 1 to 6
/ Defendants 2 to 7

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 21.06.2023 made in A.S.No.40 of 2016 passed by the learned Sessions Judge, Mahila Court, Chengalpattu, confirming the Judgment and decree dated 15.02.2016 made in O.S.No.250 of 2006 on the file of the Additional Subordinate Judge, Chengalpattu.

For Appellants	:	Mr.N. Ramakrishnan
For R1	:	Mr.Nithyesh Nataraj
		for Mr. Anirudh A.Sriram
For R2 to R6	:	No such persons



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JUDGMENT

The appellants have filed this Second Appeal against the judgment and decree of the learned Sessions Judge, Mahila Court, Chengalpattu, in A.S. No. 40 of 2016, dated 21.06.2023, which confirmed the decree and judgment passed by the learned Additional Subordinate Judge, Chengalpattu, in O.S. No. 250 of 2006, dated 15.02.2016.

2. Heard, Mr.N. Ramakrishnan, learned counsel for the appellants, and Mr.Nithyesh Nataraj, learned counsel appearing for Mr. Anirudh A.Sriram, learned counsel for R1 and perused the material available on record.

3. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

4. Challenging the concurrent findings of the courts below, the plaintiffs have preferred this appeal. Before the trial court, they filed a suit for specific performance directing the first defendant, Elumalai, to execute the sale deed as per the sale agreement dated 21-04-1986. In default, he



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sought an alternative relief of declaring the plaintiffs as the absolute owners of the suit property.

5. The plaintiffs contended that they and the defendants are siblings and that there was joint family property. Some lands were purchased in the name of the first defendant, Elumalai, out of the joint family income. As the eldest, Elumalai was considered a name-lender. At the time of the family partition on 04.04.1986, which was registered, the second plaintiff was unmarried.

6. The first plaintiff later got married and incurred debts to meet the expenses for both his marriage and the marriage of the second plaintiff. In lieu of contributing toward these expenses, the first defendant gave his share of the property to the plaintiffs. This arrangement was formalized through a sale agreement dated 21.06.1986, which was duly attested by Panchayatdars who had also witnessed the registered partition deed. The agreement did not specify a time line, making time non-essential to the contract.

7. Despite repeated demands by the plaintiffs for the execution of the



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sale deed, the first defendant refused to comply. However, the plaintiffs retained possession of the property, and the original sale deed of the suit property dated 05.05.1977, which stood in the name of the defendants, also remained in their custody. Contrary to the agreement, the defendants issued a notice on 22-07-2006 claiming ownership of the property, objected to the mutation of Patta in the plaintiffs' names, and attempted to create an encumbrance over the property. In response, the plaintiffs replied to the notice on 31-07-2006. Subsequently, the defendants executed settlement deeds in favour of D2 and D3, prompting the plaintiffs to file the suit.

8. The defendants denied the plaintiffs' claims and argued that there was no cause of action for the suit. They admitted to the family relationship and the partition dated 04-07-1986 but contended that the suit property was purchased by the first defendant out of his own funds in 1977 when he was 35 years old and engaged in milk vending. At that time, the plaintiffs were only 18 and 14 years old, and the suit property was not included in the partition. They further alleged that the plaintiffs, taking advantage of the defendants' illiteracy, forged the sale agreement dated 21-06-1986.



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9. The defendants also denied the executing the agreement regarding the payment of marriage expenses for the plaintiffs. Additionally, a dispute arose concerning the arrangement of the marriage of the second plaintiff, which led to a misunderstanding within the family. Consequently, the present suit came into existence.

10. Both parties adduced evidence before the trial Court. The learned trial Judge framed the foremost issue as follows, "Whether the sale agreement dated 21.06.1986 is true and valid".

11. Upon considering the evidence on record, the learned trial Judge concluded that, even though no time was specified in the sale agreement (Ex.A1), the plaintiffs were required to approach the Court within a reasonable time, as mandated by Article 54 of the Limitation Act, even if time was not the essence of the contract.

12. However, the plaintiffs filed the present suit nearly 20 years after the alleged agreement. In 2002, there was already litigation (O.S. No. 101 of 2002) filed by the defendants against the plaintiffs, which strained their



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relationship. Despite this, the plaintiffs failed to approach the court within three years from that period. A prudent person would have sought legal recourse much earlier, yet the plaintiffs delayed nearly two decades before filing for relief of specific performance. Moreover, there is no evidence to show that the plaintiffs expressed their readiness and willingness to perform their part of the contract, even after receiving notice regarding O.S. No. 101 of 2002. The suit was filed three years after that notice, further demonstrating inaction on their part.

13. The plaintiffs failed to prove their readiness and willingness to fulfill their obligations under the agreement. This delay and lack of effort disqualify them from seeking the relief of specific performance. Furthermore, their alternative plea for a declaration that they are the absolute owners of the property is inconsistent with the prayer for specific performance, making it legally impermissible. Consequently, the trial court dismissed the suit entirely.

14. The plaintiffs then preferred an appeal (A.S. No. 40 of 2016). The first appellate judge analyzed the entire evidence on record and concluded



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that the plaintiffs failed to meet the requirements under Section 16 of the Specific Relief Act, particularly Section 16(c), which mandates that plaintiffs prove they were always ready and willing to perform their part of the contract. In this case, the plaintiffs neither demonstrated their readiness nor expressed any intention to perform their obligations until the filing of the suit.

15. The plaintiffs admitted that they had not demanded the execution of the sale deed for the past 20 years, even after the defendants issued a notice. Furthermore, the appellate court noted the recitals in Ex.A1, which indicated that the document is to be registered, conveyance of not supported with any consideration. This suggests no contractual obligation enforceable by the parties. Considering all these facts and evidence, the appellate court affirmed the trial court's findings and dismissed the appeal. The plaintiffs were held not entitled to relief of specific performance or the alternative relief, as the latter was inconsistent with their primary claim.

16. Challenging the said findings, the plaintiffs have preferred this second appeal, raising the following prime grounds:



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i. *The Trial Court and the Lower Appellate Court ought to have decreed the suit filed by the Appellants/ Plaintiffs against the Respondents / Defendants seeking Specific Performance of the Agreement of Sale dated 21/06/1986 to execute the sale deed in favour of the Appellants / Plaintiffs and for other reliefs;*

ii. *The Trial Court and the Lower Appellate Court have failed to consider recitals in the Ex-A1, Agreement dated 21/06/1986, between the Appellants and the 1st Respondent (since deceased) which clearly shows that the 1st Defendant was obligated the sale deed in respect of the suit property in favour of the Appellants or their representatives as an when required by them while there was no other obligation to be performed by the Appellants;*

iii. *The Trial Court and the Lower Appellate Court failed to apply its judicial mind to appreciate the recital in the Ex-A1 Agreement dated 21/06/1986 and erroneously dismissed the suit without considering the said recitals which would go to show that the Appellants are indeed entitled to the relief of Specific Performance as prayed for by them and the same ought to have been granted;*

iv. *The Trial Court and the Lower Appellate Court have failed to properly appreciate the purport of Ex-A1 Agreement which is a genuine document and it is the case of the Appellants that they have entered into an Agreement of Sale with the 1st Respondent and as per the recitals, the 1st Respondent ought to execute the sale deed in favour of the Appellants as and when required by them and that the Appellants hand no other obligation to fulfil to get executed the sale deed in their favour;*

v. *The Trial Court and the Lower Appellate Court ought to have seen that a cursory reading of Ex-A1*



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Agreement will make it explicitly clear that the 1st Respondent has categorically agreed to execute the sale deed in favour of the Appellants or their representatives without receiving any amount as consideration as and when required by the Appellants and therefore there is no necessity for the Appellants to establish their readiness and willingness, which fact has been grossly neglected by the Courts below;

(vi) The Trial Court and the Lower Appellate Court have failed to apply its judicial mind to the fact that the Receipt dated 02/09/2000 - Ex-A5 has been tampered with illegally by correcting the amount received as Rs.60,000/- from Rs. 6,000/-;

(vii) The Trial Court and the Lower Appellate Court have failed to take note of the fact that the signature contained in the Ex-A1 Agreement is that of the 1st Respondent and the Appellants herein and the same not having been disproved in any manner, the 1st Respondent could not have denied the execution of the sale deed in favour of the Appellants;

(viii) The Trial Court and the Lower Appellate Court have failed to see that the Respondents had not approached the Court with clean hands and had wrongly relied upon the forged, concocted, fabricated and tampered documents filed by the Respondents and dismissed the suit thereby causing great hardship and loss to these Appellants;

ix. The Trial Court and the Lower Appellate Court that as per the recitals in Ex-A-1 Agreement, the 1st Respondent had handed over the possession of the suit property along with all the original documents in respect of the suit property to the Appellants on 21.06.1986 itself and ever since, the Appellants have been and are currently in continuous and exclusive possession and enjoyment of the suit property;



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x. The Trial Court and the Lower Appellate Court failed to appreciate the recital in the Ex.A1 Agreement that the 1st Respondent is liable to execute the sale deed in favour of the Appellants or their nominees as when they required and no time has been stipulated in Ex. A1 for completion of the sale;

xi. The Trial Court and the Lower Appellate Court ought to have taken into account only the 2nd limb of the 3rd column of Article 54 of the Limitation Act, i.e., within three years when the plaintiffs have noticed that performance is refused and ought to have held that the suit filed by the Appellants is within 3 years from the date of refusal in 2006 and hence the same has been files absolutely within period of limitation."

17. Accordingly, the learned counsel for the appellants submits that the following question of law is involved.

a. Whether the Trial court and the lower appellate Court were right in rejecting the relief of specific performance of the agreement as prayed for by the appellants even while holding that time was not the essence of the agreement for getting executed the sale deed?

b. Whether the trial Court and the lower appellate Court were right in holding that the appellants are not entitled to the relief of specific performance since they did not seek executing of the sale deed within a reasonable time even while the Ex.A1 agreement clearly states that the respondents



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/ defendants are obligated to execute the sale deed as and when demanded by the appellants?

c. Whether the trial Court and the lower Appellate Court had erred in holding that the suit relief is barred by limitation ignoring the stipulation the 2nd limb of the 3rd column of Article 54 of the Limitation Act, i.e., within three years when the plaintiffs have noticed that performance is refused and when the suit was filed by the appellants is within 3 years from the date of refusal in 2006;

d. Whether the trial court and the lower appellate Court had erred in relying upon the forged and fabricated documents and evidence led by the respondents which clearly contrary to the writings contained in Ex.A1 agreement to come to the conclusion that the appellants were not entitled to seek specific performance of the agreement?".

18. Challenging the concurrent findings, the appellants preferred this appeal. To admit the appeal, the appellants submitted the above arguments. The respondents replied that the courts below rightly held that the plaintiffs failed to prove their readiness and willingness. Moreover, the alternative prayer is entirely inconsistent with the main relief, and this was appropriately appreciated by the courts below, needing no interference.



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19. Considering both submissions, it is an admitted fact that the plaintiffs and the first defendant were brothers, and the said Elumalai was the elder brother of the family. During the pendency of the proceedings, Elumalai passed away, leaving behind his wife and children as legal heirs, who are the respondents herein.

20. Based on Ex.A1, the plaintiffs contended that Elumalai executed a sale agreement in their favour on 21.06.1986, to meet marriage expenses. The appellants/plaintiffs argued that time was not considered an essence of the contract. It is admitted that the suit property was purchased in the Elumalai's name through a sale deed in 1977, marked as Ex.A2.

21. The defendant/Elumalai contended that at the time of the property's purchase, he was 35 years old and that there was a family partition in 1986, as evidenced by Ex.A3. However, the suit property was not included in the partition because it was Elumalai's self-acquired



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property.

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22. The partition occurred on 04.04.1986, between the plaintiffs and the defendants. The suit property was excluded from this partition, despite being purchased in 1977. No reason was provided by the plaintiffs for the non-inclusion of the suit property in the partition. If the property had been joint family property, or if it had been purchased with joint family income, it should have been included in the partition. The exclusion itself shows that it was Elumalai's self-acquired property.

23. The plaintiffs sought relief of specific performance based on Ex.A1. However, the suit was filed in 2006, approximately 20 years after the alleged agreement. The plaintiffs provided no explanation for the delay or for why they did not demand performance from the defendants during this period.

24. Notably, a suit (O.S. No. 101 of 2002) was filed by the defendants against the plaintiffs. Even then, the plaintiffs did not file their suit immediately. In fact, after the defendants issued a notice on July 22, 2006,



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claiming ownership of the property, the plaintiffs replied on July 31, 2006, but still did not file the suit until two and a half years later. This conduct demonstrates that the plaintiffs failed to prove they were always ready and willing to perform their part of the contract, as required under Section 16(c) of the Specific Relief Act.

25. The appellants argued that the suit was filed within the three-year limitation period under Article 54 of the Limitation Act, starting from the date of refusal in 2006. However, the courts below correctly held that the plaintiffs' delay of nearly 20 years, and their failure to prove readiness and willingness, precluded them from seeking specific performance. The plaintiffs did not provide any valid reason for their inordinate delay.

26. The learned counsel for the appellants submits that the present suit was filed within three years from the date of the alleged denial in 2006, which is within the period of limitation. However, the courts below erroneously failed to appreciate this fact. The court also did not properly consider Article 54 of the Limitation Act, which requires a three-year time frame from the date of refusal of performance. Accordingly, it is contended



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that the suit was filed within the limitation period.

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27. Before addressing the aspect of limitation, the conduct of the plaintiffs in demonstrating their readiness and willingness to perform their part of the agreement must be established and proved. However, as discussed earlier, while time was not treated as the essence of the contract, the plaintiffs failed to demonstrate that they were ready and willing to perform their obligations under the agreement until the filing of the suit. They also did not provide any valid reason for their delay in approaching the court, which spanned nearly 20 years. This delay was rightly appreciated by the courts below, requiring no interference.

28. Thus, although the suit was filed within the prescribed time under Article 54 of the Limitation Act, the provision could not be applied to the facts of the present case, as the plaintiffs failed to comply with the conditions required under Section 16(c) of the Specific Relief Act. The relief of specific performance is an equitable remedy, and the plaintiffs are obligated to prove their case. Since they failed to meet this burden, the claim was rightly rejected.



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29. The plaintiffs are required to prove their case rather than rely on the weakness of the defendants. The alleged Ex.A1 agreement, which is unregistered, does not create any contractual obligation, as there is no recital of consideration payment. Furthermore, the suit property was the absolute property of Elumalai and was not included in the partition deed.

30. Additionally, the plaintiffs' alternative relief for a declaration of ownership is inconsistent with their primary relief of specific performance. This inconsistency was rightly observed by the courts below and requires no interference.

31. In conclusion, no substantial question of law arises in this appeal. Accordingly, this second appeal is dismissed as devoid of merit. There shall be no order as to costs.

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Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

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To

1. The Sessions Judge, Mahila Court, Chengalpattu,
2. The Additional Subordinate Judge, Chengalpattu.
3. The Section Officer, VR Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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