



A.S(MD).No.85 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

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1.A.Rajammal
2.A.Porpanaiyan
3.A.Muthulakshmi
4.A.Ponnazhagu
5.A.Anjali Devi
6.A.Solaiyan

.....Appellants/Defendants

-VS-

C.Kamaraj

.... Respondent/Plaintiff

PRAYER: Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the Judgment and Decree dated 21.12.2011 made in O.S.No.18 of 2007 on the file of the Principal District Judge, Pudukkottai.

For Appellants : Mr.V.Balaji for
Mr.R.Maheswaran

For Respondent : Mr.N.Balakrishnan



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J U D G M E N T

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This appeal is preferred as against the Judgment and Decree dated 21.12.2011 passed in O.S.No.18 of 2007 on the file of the Principal District Judge, Pudukkottai, wherein, the respondent herein has filed the suit for specific performance of contract and the same was decreed. As against the Judgment and decree, the defendants have preferred this appeal.

2.The brief averments made in the plaint are as follows:

Originally, the suit property belonged to one Arunachalam and he had entered into a sale agreement on 20.08.2006 to sell the property to the plaintiff. The sale consideration was fixed as Rs.335/- per square feet and on the date of sale agreement itself, the said Arunachalam has received a sum of Rs.50,000/- as advance from the plaintiff and the balance amount has to be paid by the plaintiff within three months. In the meantime, on 18.10.2006, the said Arunachalam died. The first defendant is the wife and the defendants 2 to 6 are the sons of the said Arunachalam. Hence, the plaintiff approached the defendants to execute the sale agreement, but the defendants evaded from executing the sale deed. Therefore, the plaintiff issued notice dated



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23.07.2007 by expressing his readiness and willingness to execute the sale deed. The said notices were received by the defendants 1 to 5. The notice sent to the 6th defendant returned with an endorsement as he left India. After receipt of the notice, the defendants issued reply notice dated 06.08.2007, wherein, the defendants had admitted the execution of the sale agreement and stated that the plaintiff did not act as per the agreement and the plaintiff intimidated the defendants. The defendants have also given a false police complaint as against the plaintiff and later, the same was closed. When the plaintiff approached the defendants, they are not ready to execute the sale deed. When the plaintiff is ready to deposit the balance sale consideration, the defendants are liable to execute the sale deed in favour of the plaintiff. Hence, the plaintiff filed the suit.

3.The brief averments made in the written statement are as follows:

The suit is not maintainable either in law or on facts. It is true that the suit property originally belonged to one Arunachalam through a sale deed dated 04.06.1975. The defendants admitted the execution of sale agreement, but the plaintiff was not always ready and willing to perform his part of contract. It is false to state that he came to know that the said Arunachalam



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died on 18.10.2006, thereafter, the plaintiff was ready to pay the balance sale consideration and get the sale deed executed in his favour. When the defendants attempted to sell the property to a third party, the plaintiff along with henchmen threatened the defendants and thereby, a complaint was lodged to the concerned police on 16.07.2007. Thereafter, on 23.07.2007, the plaintiff issued notice with false averments and the same was suitably replied by the defendants on 06.08.2007. For the said reply notice itself, the defendants expressed their willingness to execute the sale deed in favour of the plaintiff. However, the plaintiff was not ready to get the sale deed executed by paying balance sale consideration as stated in the reply notice. As per the reply notice, after one week from the date of reply, if the plaintiff is not ready to get sale deed, the advance amount of Rs.50,000/- will be fortified. Therefore, the said agreement was cancelled after 15 days from the date of reply notice. The plaintiff has not performed his part of contract by paying balance sale consideration prices even after lapse of one year from the date of agreement. Therefore, the suit is liable to be dismissed with exemplary cost. After 15 days from the date of reply notice, agreement deed shall be cancelled and the plaintiff fortified the amount of Rs.50,000/-.



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issues:

4. Based on the above pleadings, the Trial Court framed the following

- 1) Whether the plaintiff is entitled to get the relief of specific performance as sought for in the suit?
- 2) Is it true that the plaintiff was not ready to get sale deed and thereby, the agreement was cancelled?
- 3) To what relief the plaintiff is entitled to?

5. Before the Trial Court, on the side of the plaintiff, he himself examined as P.W.1 and examined one Ramalingam Chettiyar as P.W.2 and marked Exs.P.1 to P.12. On the side of the defendants, three witnesses were examined as DW.1 to DW3 and two documents were marked as Exs.B1 and B2.

6. The Trial Court, after considering the evidences adduced on either side, decreed the suit. As against the decree and judgment, the defendants have filed the present appeal suit on the following grounds:

6.1. The Judgment and Decree of the Trial Court is erroneous and against law.

6.2. The Trial Court failed to consider that the plaintiff was not at all



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willing to perform his part of the contract. When the suit agreement was executed on 20.08.2006, three months time was granted, thereafter, the plaintiff was not ready and willing to perform his part of the contract.

6.3.The Trial Court failed to consider that the plaintiff was not ready to pay the balance amount of Rs.12,50,000/- even after receiving the death certificate and the legal heir certificate from the defendants in the month of December 2006.

6.4.The Trial Court ought not to have relied on suit notice dated 23.07.2007 and held that the plaintiff was ready and willing to perform his part of the contract.

6.5.The Trial Court ought to have dismissed the suit, when the defendants have not refused to receive the balance amount and sent a reply notice by expressing their willingness.

6.6.The Trial Court failed to consider the fact that the defendants at all times visited the plaintiff, handed over Ex.A3-death certificate Ex.A4-legal heirs certificate and Ex.B1-general power of attorney and expressed their readiness and willingness to perform their part of the contract after receiving the balance sale consideration.



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6.7.The Trial Court failed to appreciate the evidence in a proper perspective and therefore, the judgment and decree of the Trial Court are liable to be set aside.

7. The learned counsel appearing for the appellants/defendants submitted that the plaintiff has filed suit for specific performance of the contract based on the agreement dated 20.08.2006 and the sale price was fixed at Rs.335/- per square feet and the time was fixed as three months for completion of the contract. The plaintiff did not get the sale deed by paying the balance sale amount with interest within a period of three months. One Arunachalam executed the agreement dated 20.08.2006 and died on 18.10.2006. When he was alive, he approached the plaintiff to execute the sale in time. Thereafter, the 6th defendant executed the power of attorney in favour of the first defendant, who is his mother, to execute the sale deed. Therefore, the defendants approached the plaintiff to get the sale deed by informing about the power deed executed in favour of the first defendant. However, the plaintiff was not ready to get the sale deed by paying the balance sale consideration. When the defendants attempted to sell the property to the third parties, the plaintiff threatened them and thereby, a police



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complaint was lodged. Immediately, thereafter, the plaintiff issued notice dated 23.07.2007 and the same was suitably replied by the defendants indicating that they are ready to execute the sale deed in favour of the plaintiff within 15 days after receiving balance sale consideration, otherwise, the agreement will automatically be cancelled and the plaintiff fortified the advance amount. Even thereafter, the plaintiff was not ready, to get sale deed in his favour, since he was not ready and willing to perform his part of contract.

7.1.The learned counsel appearing for the appellants/defendants also submitted that in the notice, the plaintiff stated that the defendants are not ready to measure the property, but there is no precondition as per the agreement to measure the property. Even after reply notice, the plaintiff was not ready to get the sale deed in his favour. The plaintiff, quite after a long time and after expiry of period, sent the suit notice. Therefore, the plaintiff is not entitled to the relief of specific performance of the contract. The Trial Court without considering the above aspects simply decreed the suit. In support of his contention, the learned counsel for the appellants/defendants has produced the following Judgments:



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(1) **(2020)2 MLJ 408 (SC)** [C.S.Venkatesh vs. A.S.C.Murthy (D) by Lrs. and others.

(2) **2022(3) CTC 650** [Prabakaran vs. Geetha]

(3) **2018(1) CTC 701** [M.Jayaprakash Narayanan vs. Santhammal]

(4) **(2011)12 SCC 18** [Saradamani Kandappan vs. S.Rajalakshmi and others]

(5) **2023(6) CTC 393** [S.Chellamuthu (died) R.Ponnusamy vs. P.Subramani and others]

(6) **2021(4) CTC 330** [M.Kumar vs. V.Balan]

(7) **2024(1) TLNJ 52 (Civil)** [P.R.Nagaraj vs. Dhanalakshmi]

(8) **[2024]0 INSC 28 / [2024]0 Supreme (SC)27** [Alagammal vs. Ganesan]

8. The learned counsel appearing for the respondent/plaintiff submitted that late Arunachalam executed an agreement for sale in favour of the plaintiff on 20.08.2006 and he has received a sum of Rs.50,000/- as advance and time was fixed as three months. Price was fixed at Rs.335/- per square feet. Neither the deceased Arunachalam nor the defendants came forward to measure the land with the help of Surveyor. The plaintiff was always ready

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and willing to perform his part of contract. Since the said Arunachalam died, the plaintiff did not issue notice on humanitarian ground. The defendants assured to execute sale deed after obtaining death and legal heirs certificates. But the defendants were postponing to execute the sale deed. The plaintiff issued a notice on 23.07.2007, however, the defendants issued reply notice with false averments. Hence, the plaintiff filed the suit for specific performance. He and his wife own land on the western side of the subject property. As the suit property is situated adjoining their land on the east, the plaintiff entered into sale agreement to purchase the subject property. The son-in-law of the said Arunachalam has preferred a false police complaint against the plaintiff and thereafter, suit notice was issued by the plaintiff. The defendants are not ready to execute the sale deed and thereafter only, the plaintiff filed the suit. The plaintiff has also deposited the balance sale price before the Court on 15.03.2012. This appeal has already been dismissed for default. But the defendants have not taken any steps to restore the appeal. As no steps have been taken, the plaintiff filed Execution Petition. Thereafter, the appeal is restored after filing a restoration petition by the defendants. In order to delay the execution proceedings, the restoration petition has been filed with the delay. The Trial Court, after considering the evidence adduced



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by both the parties, correctly decreed the suit. Therefore, the present appeal is liable to be dismissed. In support his contentions, the learned counsel for the respondent/plaintiff has produced the following Judgments:

- (i) **(2018)18 SCC 303** [Ramathal vs. Maruthathal and others]
- (ii) **(2019)8 SCC 62** [R.Lakshmikantham vs. Devaraji]
- (iii) **(2023)1 MLJ 337 (SC)** [Basavaraj vs. Padmavathi and another]
- (iv) **2023 SAR (Civ) 1** [P.Deivasigamani vs. S.Sambandan]
- (v) **(2015)1 SCC 705** [Zarina Siddiqui vs. A.Ramalingam @ R.Amarnathan]

9. Heard the learned counsel appearing on either side, perused the written arguments filed by both sides and perused the materials available on record.

10. The points of determination in this appeal are as follows:-

- (1) Whether the respondent/plaintiff was always ready and willing to perform his part of contract?
- (2) Whether the respondent/plaintiff is entitled to get the decree of specific performance of the contract?



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(3) Whether the judgment and decree passed by the Trial Court are sustainable in law and on facts?

(4) Whether the appeal has to be allowed or not?

(5) To what other relief?

For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Trial Court.

Point No.1

11(i). The plaintiff has filed the suit for specific performance of contract, based on the sale agreement dated 20.08.2006. In this case, there is no dispute with regard to the execution of the agreement and receipt of the advance amount. According to the plaintiff, the deceased Arunachalam executed a sale agreement dated 20.08.2006 and the sale price was fixed at Rs.335/- per square feet and on the date of sale agreement, Rs.50,000/- was paid toward advance sale consideration. The defendants admitted the execution of the sale agreement and receipt of the sale advance. According to the defendants, they were always ready and willing to execute the sale deed in favour of the plaintiff. However, the plaintiff was not ready and willing to get the sale deed executed after payment of balance sale consideration.

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(ii) In order to prove the case of the plaintiff, he examined himself as P.W.1 and also examined P.W.2 and marked Exs.A1 to A12. The plaintiff, in his evidence, reiterated the execution of sale agreement and payment of advance amount and also his readiness and willingness for performing his part of contract. He has also admitted the three months time, which expired on 19.11.2006. Within the above said period, the plaintiff did not get the sale deed and the said Arunachalam died and the defendants, who are the legal heirs, have also agreed to execute the sale deed, after obtaining death and legal heir certificates. Thereafter, the death and the legal heirs certificates have been handed over to the plaintiff in the month of December 2006. However, the plaintiff had not taken any steps to get the sale deed executed in his favour immediately after obtaining death certificate and the legal heir certificate of the deceased Arunachalam. Further, the available evidence shows that the defendants lodged a police complaint before the jurisdictional police on 16.07.2007 and thereafter only, the plaintiff issued a notice dated 23.07.2007. The defendants have also issued a reply notice dated 06.08.2007. In the notice issued by the plaintiff, the plaintiff called upon the defendants to execute the sale deed and also expressed his readiness and willingness to get



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the sale deed in his favour. In the said notice, the plaintiff stated that the defendants have to measure the property. In the reply notice dated 06.08.2007 (Ex.A10), the defendants have also expressed their willingness to execute the sale deed within one week from the date of receipt of the reply notice. Further, in the said reply notice, the defendants denied the notice averments of the plaintiff and also denied the readiness and willingness of the plaintiff.

(iii) Therefore, from the above, it is clear that the plaintiff has not taken any steps to get the sale deed from the defendants till the notice dated 23.07.2007. Thereafter, Ex.A5 notice was issued. Therefore, the plaintiff has failed to prove his readiness and willingness to perform his part of contract. During the cross examination, the plaintiff stated that even during the life time of the said Arunachalam, he was ready and willing to perform his part of contract. However, the plaintiff has not taken any steps after the demise of the said Arunachalam. He has also admitted that during the life of time of the said Arunachalam, the defendants have approached him to execute the sale deed and also admitted that in the month of December 2006, he received death certificate and legal heir certificate and also admitted that he has also issued notice dated 23.07.2007.



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(iv) According to the defendants, they obtained power deed from the 6th respondent, since he went abroad. The said power deed dated 09.03.2007 was marked as Ex.B1. In the power deed itself, the defendants have mentioned about the agreement entered into between the plaintiff and the said Arunachalam. Therefore, the defendants probalised their defence that they are always ready and willing to execute the sale deed to the plaintiff and the plaintiff was not ready to perform his part of contract.

(v) From the above, it is clear that the plaintiff has not issued any notice immediately after a lapse of three months agreement period and he issued a notice after a police complaint has been given by the son-in-law of the first defendant. There is no explanation from the plaintiff, as to why he has not issued notice immediately after the lapse of the agreement period.

12. The learned counsel appearing for the appellant has relied the Judgments in (i) *C.S.Venkatesh vs. A.S.C.Murthy (D) by Lrs. and others [(2020)2 MLJ 408 (SC)]* (ii) *Prabakaran vs. Geetha [2022(3) CTC 650]* (iii) *M.Jayaprakash Narayanan vs. Santhammal [2018(1) CTC 701]* (iv)



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S.Chellamuthu (died) R.Ponnusamy vs. P.Subramani and others [2023(6) CTC 393] (v) M.Kumar vs. V.Balan [2021(4) CTC 330] (vi) [P.R.Nagaraj vs. Dhanalakshmi [2024(1) TLNJ 52 (Civil) (vii) Alagammal vs. Ganesan [[2024]0 INSC 28 / [2024]0 Supreme (SC)27]

13. On a careful perusal of those Judgments, it is clear that if the agreement holder has not complied with his obligation under agreement within the period mentioned in the agreement, and legal notice issued after a long time and time has not been extended, no enforceable right is accrued to the agreement holder for getting relief under the Specific Relief Act. Inordinate delay in issuing notice for performance of contract is fatal to the plaintiff's case of readiness and willingness and long delay in filing the suit shows not ready and willing to perform his part of contract. Readiness and willingness is continuous process, readiness is capacity to pay remaining consideration and willingness is mental attitude to perform obligation in contract. Readiness and willingness must necessarily be shown from the date of agreement till passing of decree in suit and mere pleading of readiness and willingness without any material to substantiate the pleading, cannot be accepted. In the case on hand also, the plaintiff has issued notice eight



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months after lapse of period of agreement and after police complaint given by the defendants only issued notice and the defendants specifically stated in the reply notice that they are ready to execute the sale deed, but no steps were taken by the plaintiff to get sale deed in his favour. Therefore, the said case laws are squarely applicable to the present facts of the case.

14. The learned counsel appearing for the respondent/plaintiff has relied the Judgments in (i) Basavaraj vs. Padmavathi and another [(2023)1 *MLJ* 337 (SC)] (ii) R.Lakshmikantham vs. Devaraji [(2019)8 *SCC* 62] Ramathal vs. Maruthathal and others [(2018)18 *SCC* 303].

15. On a careful perusal of the said Judgments, it reveals that when the buyer has always been ready and willing to perform his part of contract at all stages and the seller who had always been trying to wriggle out of the contract, the seller cannot take advantage of his own wrong. Merely from the delay in filing of the suit after accrual of the cause of action, it cannot be inferred against the plaintiff that he was not ready and willing to perform his part of contract if the suit was filed within a period of limitation. In the case on hand, the plaintiff has not taken any steps to get sale deed in his favour



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immediately after the period of three months as per agreement and no proper explanation is given for the delay in sending legal notice and already, the defendants have lodged a police complaint against the plaintiff, then only, the suit notice was issued. Further, the defendants expressed their willingness to execute the sale deed, but the plaintiff failed to get sale deed in his favour and filed the suit. Therefore, the said case laws will not be applicable to the present fact of the case. Therefore, in view of the above said discussions, this Court is of the view that the plaintiff has failed to prove his readiness and willingness to perform his part of the contract.

Point.2

16(i) The learned counsel for the appellants/defendants contended that three months time was fixed for the execution of the agreement. However, the plaintiff was not ready and willing to perform his part of contract and hence, the time is essence of contract. Therefore, the plaintiff is not entitled to the relief of specific performance of contract. To support his contention, he relied the Judgment in *Saradamani Kandappan vs. S.Rajalakshmi and others* [(2011)12 SCC 18]. On a careful perusal of the said Judgment, it is clear that normally, in sale of immovable property, time is considered not to



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be an essence of contract, unless such intention is made out either from express terms of contract or implied intention of parties. In the case on hand, no such express terms or implied intention of parties to make time as essence of contract.

(ii) The learned counsel for the respondent/plaintiff contended that merely because of mentioning time in the agreement, it cannot be construed as time is essence of contract and there is no express terms in the agreement to make the time as essence of contract. Only because of delay in filing without referring to the conduct of the plaintiff could not be a ground for refusing the relief and the conduct of the parties has to be considered. The plaintiff was always ready to get sale deed in his favour but the defendants evaded from executing the sale deed. Therefore, the plaintiff is entitled to the relief of specific performance of contract. To support of his contention, he relied the Judgments in (i) ***Zarina Siddiqui vs. A.Ramalingam @ R.Amarnathan [(2015)1 SCC 705]*** (ii) ***P.Deivasigamani vs. S.Sambandan [2023 SAR (Civ) 1]***. On a careful perusal of the said Judgments, it is clear that merely because of the delay in filing the suit, without referring to the conduct of the plaintiff, the relief of specific performance cannot be denied



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and it cannot be a ground for refusing the relief and it is also clear that equitable discretionary jurisdiction of the Court must be exercised in accordance with sound and reasonable judicial principles. In the case on hand, the plaintiff has failed to prove his readiness and willingness.

17. In the previous point, this Court decided that the plaintiff has failed to prove his readiness and willingness to perform his part of contract. The agreement also does not reveal express terms as to time is essence of contract. The main requirement to grant specific performance is readiness and willingness of the plaintiff. The plaintiff was not ready and willing to perform his part of contract. Hence, the plaintiff is not entitled to get the decree of specific performance of the contract.

Point No.3

18. The plaintiff has filed the suit for specific performance of the contract and this Court has already decided that the plaintiff has not ready and willing to perform his part of contract and thereby, he is not entitled to get the relief of specific performance of contract as prayed in the plaint. The trial court framed proper issues and considered those issues. The Trial Court has



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failed to consider the fact that the plaintiff has not proved his readiness and willingness to perform his part of the contract and within the time fixed in the agreement, he has not even issued notice by expressing his readiness and willingness. Only after the police complaint given as against the plaintiff, he had issued a notice expressing his readiness and willingness to get the sale deed. This aspect has not been considered by the Trial Court. Therefore, the judgment and decree passed by the trial Court are not sustainable. Accordingly, the third point is answered in favour of the defendants.

Point No.4

19. This Court has already decided that the plaintiff was not ready and willing to perform his part of contract and thereby, the plaintiff is not entitled to get the decree of specific performance of the contract. Though the Trial Court has considered all the aspects, failed to consider the readiness and willingness of the plaintiff and therefore, the Judgment and Decree passed by the Trial Court are liable to be set aside by allowing this appeal. Accordingly, this appeal is liable to be allowed.



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Point No.5

20. This Court has already declined to grant the relief of specific performance to the plaintiff. However, the defendants have admitted that they received advance amount of Rs.50,000/- from the plaintiff. According to the defendants, they issued reply notice stating that if the plaintiff failed to get sale deed within 15 days from the receipt of reply notice the agreement will be cancelled automatically and the advance amount also forfeited. It is true that there are recitals in the reply notice issued by the defendants for the notice issued by the plaintiff. But mere issuing notice is not sufficient to automatic cancellation of agreement and the forfeiture of advance amount. The plaintiff has not sought for any alternative relief. However, based on the admission made by the defendants and under equity, it is appropriate to direct the defendants to pay the advance amount of Rs.50,000/- along with the interest at the rate of 9% per annum from the date of agreement till the date of realization to the plaintiff. Accordingly, the point No.5 is answered.

21. In view of the above discussions, the plaintiff is not entitled to get the decree of specific performance of the contract and the defendants are liable to pay the advance amount of Rs.50,000/- to the plaintiff along interest



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at the rate of 9% per annum from the date of the agreement till the date of realization of the amount.

22. In the result, this Appeal Suit is allowed. The Judgment and Decree dated 21.12.2011 made in O.S.No.18 of 2007 on the file of the Principal District Judge, Pudukkottai are set aside. The suit. O.S.No.18 of 2007 is dismissed in respect of the specific performance of the contract. The appellants are directed to repay the advance amount of Rs.50,000/- along interest at the rate of 9% per annum from the date of the agreement till the date of realization of the amount, to the plaintiff. No costs.

28.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes
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To

1. The Principal District Judge, Thoothukudi.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
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