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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :28.10.2025

Pronounced on :12.11.2025

CORAM

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

A.S.No.631 of 2007

1.K.Sivanandam(died)
S/o Kadirvelu Mudaliar,
No.2/17, Murugan Koil Street,
Kattupakkam, Chennai 56.

2.Mrs.Puspakantha,
W/o late Shri K.Sivanandam(died)

3.Mrs.Tamilselvi,
W/o Mr.... & D/o Late Shri K.Sivanandam
No.4, 2nd Street, M.G.Nagar,Chennai 56.

4.Mr.S.Udhayakumar,
S/o late Shri K.Sivanandam

5.Mr.Pugazhendi,
S/o late Shri K.Sivanandam

6.Rajkumar,
S/o late Shri K.Sivanandam



A2,A4 to A6 are residing at
No.2/6, Bajanai Kovil Street,
Kattupakkam, Chennai-56.

(A1 died,A2 to A6 are brought on record
as LR's of deceased 1st appellant viz.,
K.Sivanandam, vide order of Court dated
31.03.2023 made in C.M.P.Nos.3995, 3858,
3984, 3998 and 4000/2022 in
A.S.No.631 of 2007)

A2 died A2 to A6 are already on record as LR's
of deceased A2, memo recorded vide order
of Court dated 19.06.2023 made in
A.S.No.631 of 2007.

/versus/

1.Krishnaveni Ammal,
No.135, Main Road,
Kumananchavadi,
Poonamallee Taluk.

2.J.Kalyani,
No.23, Pooram Paragasam Street,
Balaji Nagar, Royapettah,
Chennai.

3.J.Jagannathan,
No.23, Pooram Paragasam Street,
Balaji Nagar, Royapettah,
Chennai.

4.J.Malathi,
No.23, Pooram Paragasam Street,
Balaji Nagar, Royapettah,Chennai.



5.J.Rajeshwari,
No.23, Pooram Paragasam Street,
Balaji Nagar, Royapettah,
Chennai.

6.K.V.Ponnuvelu(died)
2/306, Main Road,
Vannankulam,
Kattupakkam,
Chennai 600 056.

7.Mrs.Jayalakshmi,
W/o Late Dr.Parameswaran,
No.1,Alapakkam Road,
Chennai 600 087.

8.Selvam,
S/o Krishtappa Naicker,
Vanagaram Village and Post,
Ambattur Taluk.

9.Rani,W/o Ponnuvelu,

10.Ponselvi, D/o Ponnuvelu,

11.Porselvan, S/o Ponnuvelu

R9 to R11 residing at
No.2/306 Main Road,
Vannankulam, Kattupakkam,
Chennai 600 056.

(R6 died, RR9 to 11 are brought on record
as LRS of deceased 6th respondent viz., K.V.Ponnuvelu,
vide order of Court dated 04.01.2023 in C.M.P.Nos.
18620, 18621, 18622, 18623, 18624/2022 in
C.M.P.Nos.3995, 3998, 4000, 3858 & 3984/2022 and



order dated 31.03.2023 made in C.M.P.Nos.3995,
3858, 3984, 3998 and 4000 of 2022 in A.S.No.631 of 2007)

..Respondents/Defendants

Appeal Suit has been filed under Section 96 of C.P.C., against the judgment and decree dated 14.02.2007 passed by the Hon'ble Principal District Judge, Chengleput in O.S.No.81 of 2005.

For Appellants :Mr.V.Raghavachari, Senior Counsel for
Mr.R.Ganesan

For Respondents :M/s A.L.Ganthimathi,Senior Counsel for
Mr.S.M.Loganathan for R1 to R5
Mr.M.Sriram for R7 & R8, R6 died
R9 to R11-No appearance

JUDGMENT

Dr.G.JAYACHANDRAN, J.
&
MUMMINENI SUDHEER KUMAR,J.

The Appeal Suit is directed against the dismissal of the Specific Performance Suit in O.S.No.81 of 2005 on the file of the Principal District Court, Chengelpet, vide judgement dated 14.02.2007.

2. Case of the appellant as found in his plaint:

The suit subject land measuring an extent of 2 acres 59½ cents is a 'Eruwaram land', which meant split right over the land. One is the right over



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the land known as 'Adivaram' and other the right for tenancy known as 'Kudiwaram'. The two rights are discernable and alienable independently under law. The plaintiff, on 26.10.2000, entered into the agreement for sale of the Kudivaram right vested with the defendants 1 to 5 for a sum of Rs.51,90,000/-. Alleging breach of agreement, after receiving an advance of Rs.40 lakhs in total, between 26.10.2000 to 05.05.2004 and handing over the possession of the property towards part performance, the defendants 1 to 5 are not ready to execute the sale deed on receiving the balance sale consideration. Contrarily, in collusion with the defendants 6 to 8, they were trying to dispose the property to the third parties. On 25.04.2005, an attempt to trespass into the suit property was made by the 8th defendant, however, the same was duly prevented.

3. As per the terms of the agreement, the time to performance of the contract was fixed as 24 months. The defendants 1 to 5 represented that they earlier entered into an agreement for sale of the suit property with the 6th defendant, K.V.Ponnuvelu on 23.04.1990. Since K.V.Ponnuvelu abandoned the agreement, the same was cancelled. However, one Parameswaran (husband of the 7th defendant, Jayalakshmi) claiming as agreement holder with



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K.V.Ponnuvelu, had instituted a civil suit before the High Court in C.S.No.576 of 1993 against the defendants 1 to 6. The 7th defendant Jayalakshmi had also instituted original suit in O.S.No.2871 of 1991 before the XI Assistant City Civil Court, Chennai, seeking permanent injunction in respect of the suit property. The plaintiff agreed to take care of the suit C.S.No.576 of 1993 and O.S.No.2871 of 1991, but the defendants did not co-operate with the plaintiff, though the plaintiff was willing to help the defendants 1 to 5.

4. Regarding limitation and cause of action, the plaint paragraphs 16 and 18 reads as below:-

16. Time was not made or intended to be essence of the agreement of sale. As per the terms of the agreement of sale, the time for performance is 24 months after 30 days from 26.10.2000. The period of 30 days from 26.10.2000 comes to 25.11.2000. 24 months after 25.11.2000 comes to 25.11.2002. The defendants 1 to 5 agreed to execute and register a sale deed in respect of the schedule mentioned properties either in whole or part in favour of the plaintiff or his nominees. The suit is in time. The suit has been filed within three years from 25.11.2002. In fact the plaintiff was waiting and believing the representation of the defendants 1 to 5 that they would perform their part of



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obligation as per the terms of the agreement of sale.

18. The cause of action for the suit arose on 26.10.2000 the date of agreement for sale and the date of payments of advance, on 10.06.2002, 30.12.2002, 09.01.2003, 17.06.2003, 18.06.2003 and 05.05.2004 the dates of further payments of advance on 26.10.2000 the date of delivery of possession of the suit properties to the plaintiff on 25.04.2005 the date of threat of creating encumbrance “in October “2005 when the written statement of D1 to D5 was filed, and *de die in diem* at No.46, Kattupakkam Village, Poonamallee Firka and Taluk where the suit properties are situated within the jurisdiction of District Munsif Court, Poonamallee and within the jurisdiction of this Hon'ble Court.

5. The relief sought by the plaintiff reads as below:-

(a) directing the defendants or any of them to execute and register a sale deed in respect of the suit property more fully described in the schedule hereunder on the stamp papers to be furnished by the plaintiff and to receive from the plaintiff Rs.11,90,000/- or any other amount fixed by this Hon'ble Court being the balance of sale consideration within the time specified by this Hon'ble Court and in default this Hon'ble Court itself execute and register the



sale deed on behalf of the defendants.

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(b) granting a permanent injunction restraining the defendants their men, agents, servants and representatives from in any manner interfering with the plaintiff's possession and enjoyment of the suit properties described in the schedule hereunder or in the alternative, if for any reason this Hon'ble Court holds that the plaintiff is not in possession of the schedule mentioned properties, directing the defendants to put the plaintiff in possession of the suit properties described in the schedule hereunder.(underscored portion added subsequently)

(c) granting permanent injunction restraining the defendants from alienating or creating any encumbrance in favour of others over the suit properties described in the schedule hereunder.

(d) directing the defendants to pay the plaintiff the cost of suit and

(e) granting other suitable reliefs as to this Hon'ble Court may deem fit to grant.

6. After the written statement filed by the defendants, the plaintiff sought for amendment to the relief (b) and got included the alternate relief of mandatory injunction underscored above.



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7. Written statements:

Defendants 1 to 5 in their written statement, had averred that, unregistered agreement dated 26.10.2000 not executed by these defendants on that day. They do not admit certain endorsements made in that agreement and also they deny the payments shown in the endorsements. According to the defendants 1 to 5, Jagadeesan, who is the son of the first defendant Krishnaveniammal purchased Kudivaram right in the suit property and enjoying it. The 'adivaram right' belongs to Jayalakshmi, the 7th defendant. After the death of Jagadeesan on 24.08.1989, the kudivaram right devolved on the first defendant being the mother of Jagadeesan, on his wife and children, who are the defendants 2 to 5. Since there was no income derived from cultivation of the property, the defendants decided to promote the land as housing plots and for that purpose, they entrusted the work to the plaintiff and executed a power of attorney deed dated 06.12.2000 and got it duly registered. In this deed of power of attorney, it is clearly stated that the property is in physical possession and enjoyment of the defendants 1 to 5. This deed of power was executed at the instance of the plaintiff to enable him to obtain necessary sanction for the proposed lay-out. In the power of attorney deed



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executed on 06.12.2000 and duly registered, there is no reference about the agreement alleged to have been executed on 26.10.2000. The absence of reference about the earlier document proves that the suit sale agreement is a concocted document. The signatures obtained while executing the power of attorney deed been misused by the plaintiff.

8. Further, the defendants also contended in their written statement that, the plaintiff was acting detrimental to the interest of the defendants, therefore the power of attorney deed dated 06.12.2000 given in his favour was later revoked by a revocation deed dated 10.10.2001. In spite of the knowledge of the revocation of power, the plaintiff had entered into an agreement of sale in respect of the suit property with one Thiruneelakandan on 27.01.2004 representing himself as power agent of these defendants. In this sale agreement, the plaintiff had not mentioned about the suit sale agreement or about the possession of the suit property.

9. Even assuming the sale agreement dated 26.10.2000 was executed by these defendants, it is not enforceable due to the breach of contractual terms like payment of consideration within the time fixed. After the



alleged payment of Rs.10 lakhs in two instalments on the date of agreement even the next instalment of Rs.5 lakhs within 15 days from the date of agreement was not paid in time. The plaintiff who undertook to take care of the litigations initiated by Dr.P.N.Parameswaran and his wife Jayalakshmi, admittedly failed to follow up the case.

10. The defendants received money from the plaintiff only to tide over the financial commitment to repay Ponnuvelu from whom they received Rs.3lakhs when they earlier entered into agreement for sale. Taking advantage of the circumstances, the plaintiff obtained the signatures in blank stamp papers. The payments through cheques and by cash towards sale consideration is denied and the endorsements in the agreement are fabricated by the plaintiff with ulterior motive.

11. On the date of the alleged agreement for sale, i.e. 26.10.2000, there was order of interim injunction passed in C.S.No.576 of 1993. Therefore, neither the plaintiff nor the defendants, who were aware of the pendency of suit and injunction order, could not have entered into an agreement for sale in breach and disobedience of the Court order. After the



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demise of Dr.P.N.Parameswaran, the plaintiff in C.S.No.576 of 1993 (suit for mandatory injunction to get permission to alienate minors interest), his legal representatives have filed applications to bring them on record and the same is pending. During his life time, Dr.P.N.Parameswaran had filed another suit in C.S.No.740 of 1998 before High Court of Madras seeking specific performance of the agreement. He entered with the 6th defendant as power of attorney of defendants 1 to 5 and the same is also pending.

12. The plaint filed deliberately suppressing the material facts about the power attorney between the plaintiff and the defendants 1 to 5. The plaintiff failed to follow up on the pending litigations as agreed under the agreement and failed to perform the contract within the period to show his readiness and willingness. Further, the plaintiff had fabricated document and averred falsehood regarding payment of consideration and possession. That apart, the suit is barred by limitation and not valued properly. The Court fees paid is in improper. The cause of action pleaded are not true and on that ground alone the suit is liable to be dismissed.



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13. Additional written statement of the defendants 1 to 5:

On amendment of the plaint including the relief of mandatory injunction to restore possession as an alternate relief for injunction restraining peaceful possession and enjoyment, the defendants 1 to 5 in their additional written statement reiterated that the possession was never given to the plaintiff. The unregistered agreement for sale cannot be enforced, in view of the amended provisions of Transfer of Property Act, 1882. The relief of mandatory injunction without deleting the prayer for injunction restraining the disturbance of possession is self contradictory and not maintainable in law. No separate Court fees was paid for the mandatory injunction relief and no cause of action was pleaded for recovery of possession.

14. Written statement of 6th Defendant:

K.V.Ponnuvelu, the 6th defendant, in his written statement had pleaded that he is not a necessary and proper party to the suit. No cause of action against this defendant for the relief of specific performance is made out in the plaint. This defendant, who is not party to the agreement has been unnecessarily arrayed as one of the defendant.



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15. The 6th defendant had pleaded that he entered into an agreement for sale with the defendants 1 to 5 on 23.04.1990. On the strength of this agreement, he entered into an agreement of sale with Dr.P.N.Parameswaran, the husband of the 7th defendant Jayalakshmi. Since Jayalakshmi is the owner of the property, Dr.P.N.Parameswaran agreed to purchase the kudivaram right from the defendants 1 to 5 to avoid any claim. The sale price was fixed at Rs.10,75,000/- and advance of Rs.3 lakhs paid. One month time was fixed for execution of the sale deed. Dr.P.N.Parameswaran failed to pay the balance consideration within the period fixed. He filed suit C.S.No.576 of 1993 before the High Court and application No:389 of 1993 obtained interim injunction restraining the defendants 1 to 6 herein from alienating and encumbering the suit property. The relief sought in C.S.No.576 of 1993 to obtain necessary permission of the Court to sell the minor share in the property has now become infructuous, since the minor sharer had attained majority. The second suit C.S.No.740 of 1998 filed by Dr.P.N.Parameswaran for specific performance of the agreement entered on 24.05.1990 between Dr.P.N.Parameswaran and Ponnuvelu (PoA of Defendants 1 to 5) is pending and pursued by the Legal representatives of Dr.P.N.Parameswaran after his demise on 02.04.2002.



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16. The suit agreement entered, while pendency of C.S.No.740 of 1998 for enforcement of earlier agreement of sale is hit by principle of *lis pendens*. The plaintiff, who was aware of the pendency of suit, at the time of entering the agreement, cannot claim the relief of specific performance.

17. Written statement of 7th and 8th Defendants:

The 7th defendant is the melwaram right holder. The suit as framed any whisper about the melwaram right of 7th defendant is liable to be dismissed. These defendants are not party to the alleged agreement dated 26.10.2000, hence no relief of specific performance be sought against these defendants. The plaintiff had not choose to approach the Court with clean hands and had not disclosed true material facts. The 7th defendant Jayalakshmi is the owner of the suit property which she purchased from the owners under 7 sale deeds as below:-

Sl. No.	Survey No.	Purchased by	Extent Acres/Cents	Document No. Sub/Regr.Office
1	210/1	Mrs.R.Jayalakshmi	0 36	1229/89, dt.16.11.88 Poonamallee
2	210/2	Mrs.R.Jayalakshmi	0 31	1232/89, dt.19.12.88 Poonamallee
3	210/2	Mrs.R.Jayalakshmi	0 27-1/2	1230/89 dt.19.12.88 Poonamallee
4	210/2	Mrs.R.Jayalakshmi	0 48	1231/89 dt.19.12.88



<i>Sl. No.</i>	<i>Survey No.</i>	<i>Purchased by</i>	<i>Extent Acres/Cents</i>	<i>Document No. Sub/Regr.Office</i>
				Poonamallee
5	210/2	Mrs.R.Jayalakshmi	0 46-1/2	1080/89, dt.2.1.88 Poonamallee
6	211	Mrs.R.Jayalakshmi	0 35	39/89, dt.2.1.89 Poonamallee
7	211	Mrs.R.Jayalakshmi	0 35-1/2	38/89 dt.2.1.89 Poonamallee

18. The husband of the 8th defendant viz., Dr.P.N.Parameswaran had entered into an agreement dated 25.04.1990 with one Ponnuvelu, the power of attorney agent of defendants 1 to 5, wherein the defendants 1 to 5 had agreed to sell the Kudivaram rights to the husband of this defendant. The husband of this defendant has filed a suit against the defendants 1 to 6 herein in C.S.No.576 of 1993 praying for a mandatory injunction directing the defendants therein to obtain necessary Court permission to sell the shares of the then minors. (defendants 3,4,5 herein i.e.J.Jagannathan, J.Malathi and J.Rajeswari). In the said suit, an application in O.A.No.389 of 1993 was also filed by the husband of this defendant and by an order dated 30.04.1993, the Hon'ble High Court was pleased to grant an order of injunction restraining the respondents 1 to 6 from alienating, selling or encumbering the property. Her husband also filed C.S.No.740 of 1998 before the Hon'ble High Court praying



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for a decree directing the defendants 1 to 6 herein to execute the sale deed in respect of their Kudivaram Rights in the suit property. After the death of

her husband, she is pursuing the suit. The suit property is in possession and enjoyment of the her. The 8th defendant is looking after it. She filed O.S.No.2871 of 1991 for injunction. Since in the subsequent suit C.S.No.576 of 1993 filed in the High Court by her husband, the Court granted interim injunction, she allowed the suit to be dismissed for default.

19. The plaintiff is not in possession and as a matter of fact, the 7th defendant has put up a watchman shed, which is assessed to Corporation Tax and the same is being paid by the 7th defendant. The 7th defendant has also obtained electricity power connection in her name. Therefore, the 7th defendant is in actual physical possession of the suit land. The averment that the defendants 6 to 8 are making attempts to win over defendants 1 to 5 is incorrect and misleading. The plaintiff is harping upon the said agreement which is barred under the Law of Limitation and no legal right will flow out of the same. The plaintiff who seems to have obtained a power of attorney on 06.12.2000 which was cancelled on 10.10.2001 by the defendants 1 to 5 had entered into an agreement of sale on 27.01.2004 with one Thiruneelakandan,



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suppressing the fact that the power of attorney has already been cancelled.

This factum of entering into an agreement has never been averred in the plaint which will go to show that the plaintiff is guilty of suppression of material facts.

20. The suit for specific performance ought to have been filed on or before 25.10.2003. Since it was presented only on 28.04.2005, same is barred by limitation. Further, the suit as against the defendants 7 and 8 also suffers for want of cause of action.

21. In the additional written statement, the defendants 7 and 8 had pleaded that, the alternate prayer of mandatory injunction to put in possession is contradictory to the prayer for injunction and the pleadings, wherein the plaintiff had falsely asserted that he is in possession of the suit property.

22. In the reply statement, the plaintiff denied the allegation of suppression of material fact and the possession of the property. The averment



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of the 7th and 8th defendants that they have put up watchman shed, obtained electricity connection and paying tax, are all denied by the plaintiff as false.

23. Based on the above pleadings, the trial Court framed the following Issues for consideration:-

1. Whether the plaintiff is entitled to specific performance?
2. Whether the agreement dated 26.10.2000 was created on a blank stamp paper as alleged by the defendants?
3. Whether the plaintiff has suppressed the material facts and has not come to the Court with clean hands?
4. To what relief?

24. To prove the case of the plaintiff, the plaintiff examined 5 witnesses on their side and marked Ex.A1 to Ex.A13. For the defendants, the third defendant as DW-1 and the 7th defendant as DW-2 examined and Ex.B1 to Ex.B19 marked.

25. The trial Court on appreciation of evidence, answered the issues as below:-



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The Hon'ble High Court was pleased to pass an order of injunction restraining the defendants 1 to 5 not to alienate or encumber the suit property. When such an order is in force, the defendants 1 to 5 are not entitled to execute any such agreement as under Ex.A1.

26. The trial Court also had concluded that

(a) the agreement of sale dated 26.10.2000 under Ex.A1 was created on a blank stamp paper as alleged by the defendants 1 to 5.

(b) the plaintiff had suppressed the material facts. The existence of Ex.B1 power of attorney deed and Ex.B2 agreement of sale to Thiruneelagandan wantonly suppressed and as such, he has not come to the Court with clean hands.

(c) the 7th defendant who is the melwaramdarar holds interest in the suit property. She is not a party to Ex.A1 agreement. Hence, the suit agreement for sale as against the 7th defendant cannot be enforced.

(d) even if assuming Ex.A1 was executed by the defendants 1 to 5, the plaintiff has not performed his obligations as contemplated under Ex.A1 agreement. The plaintiff has totally failed to perform his part of contract and as such he is not entitled for the relief of specific performance.



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(e) the plaintiff had failed to prove that he was in possession and enjoyment of the suit property on the date of suit and hence, he is not entitled for the relief of injunction as against the defendants.

27. Being aggrieved by the dismissal of the suit for the reasons stated above, the plaintiff had preferred the appeal mainly on the following grounds:-

(a) The learned trial Judge erred in concluding that the signatures were obtained in blank papers without considering the contradictory statements by the defendants as to who has signed the alleged blank papers. The learned trial Judge failed to appreciate that no reasons were assigned in the written statement of defendants 1 to 5 as to why they signed in blank stamp papers and other papers in spite of the fact that the defendants 1 to 4 are graduate and other defendants are also educated. The defendants also did not demand the return of the blank signed papers, till now and no case has been filed by the defendants in this regard. The learned Judge failed to appreciate that DW1 in chief examination has stated that the plaintiff has taken the signatures on blank papers in order to carry out the conditions in Ex.B1 the Power of Attorney deed. But, Clause 5 in Ex.B1, empowers the plaintiff to



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sign. Therefore, there was no need to take signatures on blank papers. It was the case of the defendants 1 to 5 that at the time of execution of Ex.B1, signatures were obtained in blank papers from the defendants 1 and 2. Admittedly, the first defendant was not a party to Ex.B1. Therefore, her signatures in blank papers would not have been necessary, whereas her signatures were found in A1. This will go to show that the agreement of sale, Ex.A1 is genuine.

b) By glancing through Ex.A1, it is evident that the signatures were affixed only after the matter was typed in each sheet. In each page, the signatures were found at the end of the typed matter in the correct place in a natural manner. The signatures were not affixed at the same place in all pages. This will prove that Ex.A1 is genuine. The title deeds relating to the suit properties were in possession of families of the defendants 1 to 5. In Ex.A1 details of all the document numbers and dates of these title are mentioned. Unless the defendants 1 to 5 had agreed to sell the suit properties and had executed the agreement for sale Ex.A1, such recitals could not have been found in Ex.A1.

(c) The learned Trial Judge failed to appreciate that Ex.A2 to Ex.A6 are endorsements of payments on Ex.A1. These signatures are admitted by the



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defendants and they are not forged ones as contended by the defendants. A cursory glance of Ex.A2 to Ex.A6 will reveal that these signatures are on different dates which throws out the defence of the defendants. When the signatures in Ex.A2 to Ex.A6 were proved, the burden shifts upon the defendants 1 to 5 under Section 102 of the Indian Evidence Act, 1872 to establish that they did not receive the amount as per the endorsement Ex.A2 to Ex.A6. The learned Judge failed to appreciate that when the burden of proof got shifted on the defendants, they did not discharge their burden. Apart from the endorsement Ex.A2 to Ex.A6 showing payments, the plaintiff had paid Rs.5 lakhs on 05.06.2004. Thus, the plaintiff had proved the payment of advance of Rs.40 lakhs. The defendants 1 to 5 were the Kudivaramdhars in respect of the suit properties as admitted by them and the agreement Ex.A1 is for the transfer of Kudivaram rights only and hence, there is not necessity to implea the 7th defendant as she claims to be owner of Melvaram rights alone. The learned trial Judge failed to appreciate that the plaintiff in C.S.No.576 of 1993 was dead and the defendants have not produced any record to show that there is a subsisting interim injunction order. O.S.No.2871 of 1991 has been dismissed for default. Hence, the plaintiff cannot be blamed for not pursuing the cases. The plaintiff has not suppressed any material fact and he has come



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only with clean hands. One Thiruneelakandan examined as PW-5 has stated that agreement Ex.B2 was cancelled as he has no funds to purchase and that he had taken back the advance paid. This Ex.B2 does not affect the main case in any manner.

28. Points for determination in the appeal suit are as follows:-

(1) Whether the suit agreement dated 26.10.2000 marked as Ex.A1 is enforced through an order of the Court?

(2) After the denial of the execution of Ex A-1 on the date it bears, whether the burden of proving the genuineness of Ex.A1 shifts on the defendants ?

(3) Whether the finding of the trial Court that Ex.A1 agreement and the endorsements made on the document was fabricated, after obtaining signatures in blank, is sustainable?

(4) Whether the plaint as framed suffers suppression of material fact?

(5) Whether the plaintiff has proved his readiness and willingness?

29. The instant suit for specific performance, mainly centres on the terms of Ex.A1 the disputed agreement for sale. The defendants contest the



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suit on several grounds including the very execution of the deed. Apart from, the receipt of consideration, transfer of possession, failure to prove ready and willingness and limitation.

30. The reading of Ex.A1, on the face of it indicates that, it was executed on 26.10.2000 at Chennai. The defendants 1, 2, 3, 4 and 5 are the parties of the first part. The 5th defendant was 17 years old at that point of time and she has been represented by her mother Kalyani, who is the second defendant. The defendants 1 to 4 and the plaintiff are the signatory to this document. one Mr.K.Chockalingam and Mr.A.Thirumalai are the witnesses to the document.

31. The agreement for sale contains nine conditions. The first condition speaks about the extent of the land and the sale consideration. The payment of Rs.5,00,000/- as the first installment on 16.10.2000 and another payment of Rs.5,00,000/- on 25.10.2000, the date of execution.

32. It is found that in the preamble of the deed the date of execution is mentioned as 26.10.2000, whereas in this clause, the date is wrongly



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mentioned as 25.10.2000, instead of 26.10.2000. The parties have agreed to receive the balance sale consideration of Rs.41,90,000/- in installments and the first installment of Rs.5,00,000/- to be paid within 15 days. Thereafter the parties of first part at their expenses should measure the land and fix the boundary with the help of surveyor. Then within 15 days of of fixation of boundary, a sum of Rs.6,90,000/- to be paid by the vendor. The balance Rs.30,00,000/- to be paid within a period of 24 months either in part or in one lump sum.

33. The second condition is in respect of undertaking given by the plaintiff to take care and settle the litigation initiated by Dr.P.N.Parameswaran in O.S.No.576/1993 (sic O.S.No.576/1992) and Jayalakshmi in O.S.No.2871 of 1991. In the plaint, while referring these litigations, it is contended by the plaintiff that he was always ready and willing to help the defendants 1 to 5, but they were not co-operating with him to defend those suits and also contended that O.S.No.2871 of 1991 filed by Jayalakshmi got dismissed as default and he is not aware what happened the suit filed by Dr.P.N.Parameswaran after his death.



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34. This is a candid admission of the plaintiff that he has failed to keep his promise to take care of these two suits at his own costs.

35. The third condition is in respect of return of money received by the defendants as advance from Ponnuvelu.

36. The plaintiff has agreed to return the money received as advance from Ponnuvelu in the earlier agreement entered between the defendants, which has been lapsed due to efflux of time. There is no evidence to show that the plaintiff complied this condition. Ponnuvelu who is arrayed as 6th defendant in the present suit, has filed written statement, independently, wherein, he has claimed that he is not even aware of the suit agreement Ex.A1 and its clauses. Further pleaded that return of the money advance will not arise since the suit for specific performance initiated by Dr.P.N.Parameswaran and pending.

37. The fourth condition is very crucial condition which says, on payment of Rs.21,00,000/- towards part payment of sale consideration. The 3rd defendant has to alienate 1 acre of land out of the total extend of 2 acres 59



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1/2 cents to the plaintiff or to his nominee. The plaintiff never sought for the enforcement of this clause.

38. On examining Ex.A2 to Ex.A6, which are the endorsements made on the back of the agreement for sale, we find that the first endorsement is signed by third defendant Jagannathan alone in the presence of two witnesses, by name Chockalingam and Chandramouli. This endorsement is an acknowledgement for receipt of cheque Rs.10,00,000/-. In the second endorsement marked as Ex.A2, dated 30.12.2002 is for receipt of Rs.4,00,000/- by cash. In this endorsement, next to the signature of Jagannathan, the third defendant, Malathi the fourth defendant, had signed and put the date below her signature. Covering the date, two revenue stamps each value of Rs One affixed on which the signatures of the 2nd defendant and the 5th defendant, J.Rajeswari were found. In this endorsement, again Chokkalingam is one of the witness and there is yet another person signed as witness without mentioning his name. In this endorsement for receipt of Rs.4,00,000/- the first defendant Krishnaveni Ammal is not the signatory. The third endorsement marked as Ex.A4 is the acknowledgement for receiving Rs.6,00,000/- in cash on 09.01.2003. In this acknowledgement, the defendants



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2 to 5 have affixed their signature. The signature of first defendant Krishnaveni ammal is missing. The fourth endorsement marked as Ex.A5 is for Rs.3,00,000/- by cash on 17.06.2003. In this endorsement, the defendants 2, 3 and 4 alone have signed, but the defendants 1 and 5 have not signed. The fifth endorsement marked as Ex.A6 is for the receipt of Rs.1,00,000/- by cash and a cheque for Rs.1,00,000/-. This endorsement is dated 18.06.2003. In this endorsement, except Krishnaveniammal, the other defendants 2 to 5 have signed.

39. The receipts through these endorsement again exposes that there was no consensus between the parties and not all the vendors acknowledge the payments.

40. The 6th condition says that the possession is handed over to the plaintiff as part of performance. Evidence show that the physical possession of the property remained with 7th defendant as owner of the adhiwaram.

41. The 7th condition is the undertaking given by the defendants 1 to 5/vendors, to executed a General Power of Attorney in favour of the plaintiff.



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42. It is to be noted that, if Ex.A1 was in existence before executing Ex.B1, the General Power of Attorney by Kalyani and others to the plaintiff, then in all reasonable circumstances, in the general power of attorney Ex.B1 executed on 06.12.2000, there would have been a reference about the agreement Ex.A1.

43. As per Ex.A1 and the endorsements Ex.A2 to Ex.A6, the last payment was on 18.06.2003. Sekar Sha (PW-3), Thirumalai (PW-4) or Chokkalingam(PW-5) were the witnesses for these endorsements. It is also averred in the plaint that further payment of Rs.5,00,000/- in cash was given on 05.05.2004 without getting any receipt or endorsement. It is specifically averred in the plaint that when the plaintiff sought for receipt, the defendants evaded so he did not get receipt or endorsement in the document Ex.A-1. Regarding the payments made in cash, the explanation of the witnesses for not getting a receipt for the said payment apparently sounds very childish. Therefore, the payments in cash has to be ignored and excluded. The limitation for filing the suit for specific performance ought to be computed from the expiry of 24 months agreed by the parties for completing the contract.



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44. The agreement is in respect of immovable property, which carries a peculiar character of 'Eruwaram rights'. The agreement for sale is only in respect of 'kudivaram', that is right of tenancy. The agreement marked as Ex A-1 and the endorsements on it for receipt of part sale consideration are marked as Ex.A-2 to Ex.A-6. The specific case of the defendants 1 to 5 in their written statement is that Ex.A-1 was not executed on 26.10.2000. It was prepared by the plaintiff, after getting their signatures in blank stamp papers. The endorsements Ex.A-2 to Ex.A-6 were not signed by all of them and they were fabricated.

45. The Trial Court, taking note of the fact that, on the date of executing the agreement of sale, there was injunction order in force granted by High Court in the suit C.S.No.576 of 1993 filed by Dr.P.N.Parameswaran. Even assuming that Ex.A-1 was signed by defendants 1 to 5, for argument sake, it should have been created subsequently on the blank stamp papers signed by them. Strong doubt about the due execution of Ex.A-1 on the date it bears, is due to omission to refer about its existence, when Ex.B-1 general power of attorney deed dated 06.12.2000 entered between the same parties for



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the same property, subsequently.

46. The said doubt is reasonable. The plaintiff is bound to explain about the conspicuous omission to mention about the suit agreement for sale marked as Ex.A-1 in the subsequent power of attorney deed in Ex.B-1 or atleast he should have disclosed about the power of attorney in his pleadings and assigned reason why there was no reference about Ex.A-1 in the subsequent document Ex.B-1. Particularly, when there is a contra information about the delivery of physical possession of the land, this omission gains significance and relevant for deciding the genuineness of Ex.A-1 and its validity to enforce compulsorily. In the unregistered agreement for sale- Ex.A1 dated 26.10.2000, condition (6) confirms delivery of possession to the plaintiff as part performance on receipt of sale consideration of Rs.10 lakhs in two installments. Whereas, in the registered power of attorney deed Ex.B-1 dated 06.12.2000, there is a clear recital that no consideration is received and possession not transferred.

47. In the given facts and circumstances, the burden of proving the unregistered document Ex.A-1, containing Clauses contrary to the registered



document Ex. B-1 executed subsequently between the same parties and for same property, lies on the party who asserts the existence of such a fact.

48. The Hon'ble Supreme Court in the case of ***Thiruvengadam -vs- Navaneethmmal and another*** reported in ***[(2008) 4 SCC 530]***, to the query as to on whom the burden of proof lies when a document is denied as forged and fabricated, said :-

“19. The trial court had analysed the evidence properly and had dismissed the suit by giving cogent reasons. The first appellate court reversed it by wrongly placing onus on the defendants. Its observation that when the execution of an unregistered document put forth by the plaintiff was denied by the defendants, it was for the defendants to establish that the document was forged or concocted, is not sound proposition. The first appellate court proceeded on the basis that it is for the party who asserts something to prove that thing; and as the defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it”

49. Similar to the case in hand, in the above case also the plaintiffs came to the Court alleging that the first defendant had executed an agreement of sale in their favour. The first defendant having denied it, the Apex Court by



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confirming the trial court Judgement and reversing the finding of the High Court, held that the burden was on the plaintiff to prove that the first defendant had executed the agreement and not on the first defendant to prove the negative.

50. While considering the contention of the appellant that under Section 102 of the Indian Evidence Act, 1872 (Section 105 of the BSA), the burden of disproving Ex.A-1 lies on the defendants 1 to 5, we hold in the light of the dictum laid by the Hon'ble Supreme Court in the judgement cited supra, the said contention not sustainable.

51. In the case in hand, the defendants through Ex.B-1 a registered document had adduced evidence to prove by preponderance of probability that Ex.A1 could not have been executed on the date it bears or the endorsements marked as Ex.A2 to Ex.A6 as proof for receipt of consideration by the vendors. For deciding this point, Section 102 of the Indian Evidence Act, 1872 need to be referred.

52. The said provision reads as below:-



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102. On whom burden of proof lies — *The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.*

53. This Section will be of some assistance to the appellant only if no evidence adduced by the other party. When Ex.B-1 is produced and established by the defendants that the plaintiff was appointed as their power agent to assist the work of promoting the suit land as lay out, the plaintiff for obvious reasons suppressing the fact that he was given power to deal with the property. Obviously, to screen the fact that he was not given the possession of the property and he had not received any consideration.

54. Section 101 of the evidence Act (Section 104 of Bharatiya Sakshya Adhiniyam, 2023) fastened the burden on the plaintiff to prove that Ex.A-1 was executed on 26.10.2000 which is the date the documents bears. The defendants have denied the said assertion of the plaintiff and by probability also proved that the deed Ex.A-1 not a duly executed by the defendants on the date it bears. The later amendment to the plaint by including the alternate relief of mandatory injunction to recover the possession also



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adds further cloud on the genuineness of the agreement of sale Ex.A-1.

55. At the same time, we are also not oblivious of the admission of the 3rd defendant in his cross examination, about receipt of money from the plaintiff and some of the signatures in Ex.A-1 to Ex.A-6. These admissions unfortunately cannot help the case of the plaintiff/appellant in any manner since, the plaintiff/appellant failed to prove the fact that Ex.A-1 agreement for sale was duly entered between the parties on 26.10.2000. The admission of 3rd defendant is with a caveat that those signatures were obtained in blank while executing the power of attorney deed marked as Ex.B-1 and money was borrowed as loan to clear the debt to Ponnuvelu, who was their earlier power Agent.

56. Turning to the next point, that is suppression of material facts, we find for the reason best known, the plaintiff failed to disclose Ex.B1 power of attorney dated 06.12.2000 entered between him and the defendants. This is entered between the plaintiff as one party and the defendants 2,3 and 4 as another party. As disclosed earlier, though this is the subsequent document, Krishnaveni ammal, the first defendant, who is also interested in the property



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as the mother of the deceased Jagadeesan, is not a party. We had also taken note that even in the alleged receipts marked as Ex.A2 to Ex.A6, the signatures of Krishnaveni ammal are not found. The specific case of the defendants is that the power of attorney was revoked by a registered document dated 10.10.2001 (Ex.B 3). It is proved and admitted that despite revocation of power of attorney, the plaintiff has entered into an agreement for sale based on the power of attorney already revoked with Thiruneelakandan on 27.01.2004. Xerox copy of the registered agreement for sale with Thiruneelakandan is marked as Ex.B2. The plaintiff has for his convenience suppressed the fact about the execution of the sale agreement in his pleadings.

57. After the written statements of the defendants, the plaintiff in his reply has averred that he had cancelled the sale agreement with Thiruneelakandan. To prove this he had also examined Thiruneelagandan as PW-5 and marked the cancellation deed. In the cross examination of Thiruneelakandan (PW-5), it has been elucidated that he has entered into the agreement Ex.B2 with the plaintiff even without verifying the encumbrance. This leads to an inference that he was not a bona fide purchaser and the sale



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agreement is a sham and nominal created in collusion.

58. As the law prevailed during the execution of Ex.A-1, any person, who seeks the equitable relief of specific performance, must come to the Court with clean hands and his action should equitable. He is not entitle for the equitable relief by suppressing material facts. In the case in hand, we find wilful suppression of material facts.

59. To grant of specific performance relief, proof of ready and willingness is '*sine quo non*'. The appellant herein had laid his suit for enforcement of the agreement for sale dated 26.10.2000. The terms and conditions of the agreement read as a whole indicates it is infact a stage bound and time bound. The plaintiff cannot plead that time is not the essence of the contract, by taking advantage of the endorsements marked as Ex.A-2 to Ex.A-6. In these endorsements not all the parties concerned had signed. Therefore, the period of 24 months, has to be reckoned from the date of the agreement (26/10/2000). The suit has been filed on 28.04.2005 before the Principal District Court, Chengalpet. Even assuming that the receipt will extend the limitation, the plaintiff has failed to prove his readiness and willingness. As per



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Ex.A1, the plaintiff ought to have paid a sum of Rs.5,00,000/- within 15 days of the agreement. Whereas, after the agreement, the first payment, after the agreement alleged to have made to the one of the vendor only on 30.12.2002. This itself shows that the plaintiff was not ready to pay the first installment within the time fixed. Condition No.4 in Ex.A-1 states that after payment of Rs.21,00,900/-, the plaintiff can seek for transfer of one acre of land in his name or in the name of his nominee. The plaintiff pleads that he totally paid Rs.40 lakhs out of Rs.51,90,000/- If really, the plaintiff has made any payments as claimed, there was no impediment for him to seek transfer of the one acre immediately after paying Rs.21,00,900/-. There is no evidence or pleading by the plaintiff that he after paying requested the defendants to register one acre of land in his name or his nominee name and it was refused by the defendants 1 to 5. No pleadings by way of explanation why he did not exercise the option available to him under condition 4. This indicates that he was neither willing nor ready to perform his part of contract at any point of time. His unexplained inaction to enforce the terms of agreement when it was due soon after his alleged payment of total sum of Rs.21,00,900/- fatal to his case.



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60. Yet another condition under the contract was that he should take care of the pending litigation O.S.No.576 of 1993 and O.S.No.2871 of 1991.

In his plaint itself, he has admitted that he had not taken care of these two suits, since the defendants did not co-operate with him. The evidence indicates that the defendants were contesting the matter on their own and had entered into compromise with the parties later.

61. In a suit for specific performance, the law is very clear that the plaintiff must plead and prove his ready and willingness to perform his part of the contract at all times, from the date of the contract till the date of hearing of the suit.

62. In *Umabai -vs- Nilkanth Dhondiba Chavan* reported in [(2005) 6 SCC 243], the Hon'ble Supreme Court has held,

(i) finding as to whether the plaintiffs are all along and still are ready and willing to perform their part of contract is a mandatory requirement under Section 16(c) of the Specific Relief Act.

(ii) To find as to whether the plaintiff is all along and still are ready and willing to perform his part of contract, the entire attending circumstances to be taken for determination.



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(iii) A bare averment in the plaint or a statement made in the examination- in- chief would not suffice. The conduct of the plaintiff- respondents must be judged having regard to the entirety of the pleadings as also the evidences brought on records.

63. In *N.P.Thirugnanam v. Dr.R.Jagan Mohan Rao* reported in *[(1995) 5 SCC 115]* the Apex Court had in different words reiterated the above dictum as below:-

“ [Section 16 \(c\)](#) of the Act envisages that the plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail.

To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff



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prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was always ready and willing to perform his part of the contract."

64. Thus, looking from any angle, even assuming that Ex.A-1 was executed by the defendants 1 to 5, the endorsements in Ex.A-1 marked as Ex.A-2 to Ex.A-6, held not by all the vendors with consensus *ad idem*. That apart, the plaintiff, who had not performed his part of contract, as per the terms found in Ex.A1 right from its existence, had lost his right to enforce the agreement. His belated approach to the Court, for the enforcement of the agreement with the false averments that the possession was given to him as part performance dis-entitles him for any remedy.



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65. The attempt to get possession by amendment to his prayer seeking mandatory injunction as alternate prayer only after the 7th defendant pleaded her possession through kist receipts, house tax receipts and EB card (later, also proved through Ex.B11 to Ex.B15) further worsen his case for suppression of truth and suggestion of falsehood.

66. These facts would clearly show that the plaintiff has not come to the Court with clean hands. He had not proved his ready and willingness. The trial Court having considered the evidence and rightly dismissed the suit with costs.

67. We find no factual or legal error in the conclusion of the trial Court worth for interference under Section 96 of CPC. Hence, ***this Appeal Suit is dismissed with costs.*** Consequently, connected Miscellaneous Petition if any is also closed.

(Dr.G.J.J.) & (M.S.K.J.)



12.11.2025

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Index:yes

Internet:yes

Speaking order/non speaking order

Neutral citation:yes/no

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To

- 1.Principal District Judge, Chengleput.
- 2.The Section Officer, VR Section, High Court, Madras,

Dr.G.JAYACHANDRAN, J.
and
MUMMINENI SUDHEER KUMAR, J.

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delivery Judgment made in
A.S.No.631 of 2007

12.11.2025