



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-04-2025

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THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA No. 355 of 2025

and

CMP No.10686 of 2025

1. P.Namasivayam
2. Menaka

Appellants

Vs

- Velusamy (Died)
1. Saravanaprabu
 2. Vishnu Sundar
 3. Manimegalai

Respondents

PRAYER:- Second Appeal filed under Sec.100 of Civil Procedure Code, praying to set aside the Judgment and decree passed in AS No.24 of 2021 on the file of the Principal District Judge, Tiruppur dated 02.06.2022 confirming the Judgement and decree made in OS No.63 of 2008 on the file of the Additional Sub Judge, Tiruppur dated 19.12.2019.

For Appellant(s): Mr.R.Babu

For Respondent(s): Mr.P.Valliappan
Senior Advocate For
M/s. P.V. Law Associates for R1 and R3



JUDGEMENT

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The appellants, who are the plaintiffs filed the suit against the defendants seeking for the relief of specific performance before the trial court in O.S. No.63 of 2008 on the file of Addl. Sub-Judge, Tiruppur and the same was dismissed by the trial court. Against which, they preferred an appeal in A.S.No.24 of 2021 on the file of Principal District Judge, Tiruppur and the same was also dismissed by confirming the findings of the trial court. Now, challenging the concurrent findings of courts below, the plaintiffs preferred this Second Appeal.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the plaintiffs filed a suit for specific performance against the defendants praying to execute the sale deed as per the sale agreement dated 21.04.2005 and the defendants agreed to sell the property for a sum of Rs.3,30,000/- on 25.04.2004. One year time was fixed to execute the sale deed. Thereafter, the plaintiffs approached the defendants to perform his part of contract and also issued notice to him. In spite of notice, they failed to execute the same. Hence, he come forward with the present suit.



4. The defendants filed their written statement admitting the execution of sale agreement, but denied the other allegations and stated that on 23.06.2005, the plaintiffs gave one telegram, through which they have expressed their readiness and willingness, but before that made over was made to 2nd plaintiff on 21.04.2005 but that was not informed to the defendants. Thereafter, nearly about two years later, on 18.07.2007 he issued another notice and thereafter nearly about one year later in the year 2008, he filed the suit, which itself shows that the plaintiffs were not ready and willing to perform their part of contract. Therefore, the trial court held that the plaintiffs have not proved their readiness and willingness and dismissed the suit. Against which, they preferred an appeal in A.S.No.24 of 2021, wherein the first appellate on analysing the evidence on record, confirmed the findings of trial judge and dismissed the suit. Challenging the concurrent findings of the courts below, now the plaintiffs preferred this Second Appeal.

5. The learned counsel for appellants argue that even at the time of filing written statement, the defendants themselves admit the sale agreement, thereby the plaintiffs have proved their readiness and willingness. Since the defendants



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admitted the agreement, the learned counsel for plaintiffs would submit that at the earliest point of time, the 1st plaintiff made over the agreement to the 2nd plaintiff, which was not informed to the defendants when the notice issued on 23.06.2005 and thereafter, nearly about two years later, another notice was issued to the defendants, thereafter one year later, the suit was filed, which itself shows that the plaintiffs are not ready and willing to perform their part of contract and the same was rightly appreciated by the courts below.

6. Heard and considered rival submissions made by learned counsel for appellants as well as learned counsel for respondents 1 and 3 and perused the materials available on record.

7. Considering the facts and both side submissions, the plaintiffs have to prove their readiness and willingness to perform their part of contract, which is a mandatory requirement to avail the remedy of specific performance as prescribed under Sec.16(c) of Specific Relief Act, but not proved. Therefore, both the courts below rightly dismissed the suit, which needs no interference. Furthermore, the defendants admit that an amount of Rs.10,000/- was received as advance by the original agreement holder Velusamy and the said sum is



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ordered to be returned with interest at the rate of 7.5% from the date of agreement dated 25.06.2004 till realisation either directly to the appellant or they shall deposit the amount in their account within a period of two months from the date of receipt of copy of this judgment. Hence, this Second Appeal is liable to be dismissed, since there is no question of law involved for consideration. Accordingly, this Second Appeal is dismissed as no merit and the findings rendered by first appellate court in A.S.No.24 of 2021 is confirmed. Suit is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed. Refund Rs.10,000/- with 7.5% interest from 25.06.2004 till realisation.

28-04-2025

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Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

To

1. Principal District Judge, Tiruppur.



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2. Addl. Subordinate Judge, Tiruppur.

3. Section Officer, VR Section, Madras High Court.

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T.V.THAMILSELVI J.

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