



S.A.No.153 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2025

CORAM:

THE HONOURABLE **Mrs.JUSTICE R.KALAIMATHI**

S.A.No.153 of 2023
and
CMP.No.4471 of 2023

P.Vadivelu

... Appellant

vs.

S.Nagasami

... Respondent

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 27.09.2022 made in A.S.No.8 of 2021 on the file of I Additional District Court, Tiruvallur, reversing the Judgment and Decree dated 03.12.2020 passed in O.S.No.4 of 2014 on the file of the Subordinate Court, Tiruttani.

For Appellant : Mr.P.Sankaranarayanan

For Respondents : Mr.G.Jai Sivaramaraj

JUDGMENT

Aggrieved by the reversal findings of the First Additional District Court, Tiruvallur dated 27.09.2022 passed in A.S.No.8 of 2021, the defendant herein has filed this Second Appeal.



S.A.No.153 of 2023

WEB COPY

2. The parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. According to the plaintiff, the defendant is the absolute owner of the suit property. The defendant offered to sell the plaint schedule mentioned property to the plaintiff and the plaintiff intended to purchase the same. The defendant agreed to sell the said property for a sum of Rs.3,27,000/- and having received a sum of Rs.1,27,000/- as an advance amount, executed sale agreement dated 01.10.2007 in favour of the plaintiff. As per the terms of the said sale agreement, the plaintiff has to pay the balance sale consideration of Rs.2,00,000/- to the defendant within three months from the date of sale agreement i.e. on or before 31.12.2007. However, in the Sale Agreement, instead of mentioning the date as 01.10.2007 to 31.12.2007, it was mistakenly mentioned as 01.10.2007 to 31.01.2008.

3.1. At the time of entering into the sale agreement, the defendant agreed to obtain the certified copy of possession receipt in respect of the suit property from the Court to be obtained (in a suit) within three months. However, defendant failed to receive the possession receipt within the



S.A.No.153 of 2023

stipulated period. The defendant asked the plaintiff to give a sum of Rs.10,000/- on 13.12.2009 towards the balance sale consideration as the defendant had given consent for extension of time for specific performance of the said sale agreement and the defendant made an endorsement in the said sale agreement even on 13.12.2009.

3.2. The defendant again assured the plaintiff that he would obtain the possession receipt from the Court within a short time. Again, on 10.12.2011, the defendant asked the plaintiff to pay a sum of Rs.40,000/- towards the balance sale consideration and the plaintiff paid the said amount on the same day. The defendant then made an endorsement in the sale agreement. Upon the request of the plaintiff, the defendant recited the reason for extension of time for specific performance of the contract in the endorsement dated 10.12.2011.

3.3. Thereafter, the plaintiff repeatedly demanded the defendant to hand over the possession receipt to receive the balance sale consideration of Rs.1,50,000/- and to execute the registered sale deed in favour of the plaintiff. The plaintiff has always been ready and willing to perform his part of the contract by tendering the balance sale consideration. The defendant, however, was causing delay in the execution of the sale deed. Though the defendant failed to hand over the

Page 3 of 18



S.A.No.153 of 2023

possession receipt as agreed upon. The plaintiff then asked the defendant to receive the balance sale consideration of Rs.1,50,000/- and execute the registered sale deed, but the defendant refused to execute the sale deed in his favour.

3.4. Therefore, the plaintiff issued a legal notice dated 11.11.2013 calling upon the defendant to receive the balance sale consideration of Rs.1,50,000/- from him and to execute the sale deed in his favour. Despite the receipt of notice, neither the defendant replied nor his demand was met. The defendant filed a caveat petition and was attempting to alienate the plaint schedule mentioned property. Hence, the plaintiff filed this suit for the relief of specific performance and for grant of permanent injunction not to alienate the suit property.

4. Per contra, the defendant would interalia contend that the allegation that he agreed to sell the suit property for a sum of Rs.3,27,000/- and executed the unregistered sale agreement dated 01.10.2007 by receiving a sum of Rs.1,27,000/- is incorrect. The other details mentioned in the plaint are not admitted including, receipt of part payment. The plaintiff agreed to provide funds for the defendant's daughter marriage and paid a sum of Rs.1,00,000/- to the defendant. But the defendant executed the said Sale Agreement as security for the loan



S.A.No.153 of 2023

received by him. The plaintiff did not make any further payments as promised by him. The suit is barred by law of limitation. The plaintiff has suppressed material facts and lacks bonafides.

5. Based upon the divergent pleadings, the Trial Court framed the relevant issues. At trial, to substantiate the plaint details, on the plaintiff's side, four witnesses have been examined and nine documents have been marked. Ex.A1 dated 01.10.2007 is the Agreement for Sale executed by the defendant in favour of the plaintiff. On the defendant's side, defendant has examined himself as DW1 and no document was marked. In respect of Ex.A1- Sale Agreement at the instance of the plaintiff, it was sent to Forensic Science Department, Chennai and the opinion given by the Hand writing Expert is Ex.C2.

6. The Trial Court upon consideration of oral and documentary evidence and after hearing the arguments advanced by the learned counsel on either side by relying upon the handwriting Expert Report – Ex.C2 and testimony of the Handwriting Expert - PW4, concluded that the Sale Agreement was not executed by the defendant and dismissed the suit as hit by law of Limitation.



S.A.No.153 of 2023

7. Aggrieved, the plaintiff preferred appeal before the First Additional District Court, Tiruvallur in A.S.No.8 of 2021. The First Appellate Court, upon consideration of the case records and after hearing the arguments advanced by the learned counsels for both sides, held that the execution of Sale Agreement and endorsements are made by the defendant and rejected the report of handwriting Expert (Ex.C2). It is further observed that as far as willingness and readiness to perform his part of contract is concerned, plaintiff has duly proved it and decreed the suit. Against the reversal findings, the defendant has preferred this Second Appeal.

8. The following substantial questions of law arise for consideration:-

- i) Whether First Appellate Court's Judgment is contrary to law as it has proceeded to allow the appeal of the respondent. The subject matter of the suit is based on the strength of disputed unregistered sale of agreement?
- ii) Whether the First Appellate Court's Judgment is contrary to law as it has proceeded to allow appeal. The suit was filed by the respondent in the lower Trial Court barred by limitation of law?



WEB COPY



S.A.No.153 of 2023

iii) Whether the First Appellate Court failed to appreciate the evidence of P.W.4 - Handwriting Expert, who had given the report about the forged signatures which was carefully scrutinized by the Trial Court?

iv) Whether the First Appellate Court failed to look into the readiness and willingness of the plaintiff to perform his part of contract ?

9. The sum and substance of the plaintiff's case is that the defendant - owner of the suit property executed a Sale Agreement in favour of the plaintiff by receiving the advance amount of Rs.1,27,000/- out of Rs.3,27,000/-. His further case is that, though the period of performance was fixed at three months on 13.12.2009 and on 10.12.2011, at the request of the defendant, he received a sum of Rs.10,000/-, Rs.40,000/- respectively from the plaintiff. After issuance of legal notice, as the defendant did not come forward to execute the sale deed the suit for specific performance was laid.



S.A.No.153 of 2023

10. Rather, the defendant would inter alia contend that he did not execute sale agreement in favour of the plaintiff but executed the document as security for the loan amount of Rs.1,00,000/- received for his daughter's marriage. The endorsement details were denied by the defendant and pleaded forgery.

11. In a suit for specific performance, the basic principle of law is that as per Section 16(c) of the Specific Relief Act, 1963, the plaintiff who is the vendee, must aver and prove that he has been continuously ready and willing to perform his part of contract throughout. Therefore, the burden lies on the plaintiff to prove the fact. It is also interesting to note that it is really the evidence that has to be appreciated and it may be oral, documentary or circumstantial in nature.

12. It is relevant to refer to the observations made in ***Nirmala Anand Vs. Advent Corpn. (P) Ltd. reported in (2002) 8 SCC 146***, wherein Three Judge Bench of the Apex Court has held as under:-

"It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition



WEB COPY



S.A.No.153 of 2023

including payment of an additional amount by one party to the other while granting or refusing decree or specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the consideration besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her along, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the consideration to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing the specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.”

13. In **K. Prakash Vs. B.R. Sampath Kumar, reported in (2015) 1**

SCC 597, the Apex Court observed as under:-

“The principles which can be enunciated is that where the Plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the Plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the



WEB COPY



S.A.No.153 of 2023

discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated u/s 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then the Court has to exercise its discretion in favour of granting relief for specific performance.”

14. Plaintiff has examined himself as P.W.1 and has filed his proof affidavit in line with the details of plaint. Though the defendant has admitted his signatures found in the Sale Agreement but he would state that he executed the document for security purpose for the loan received from the plaintiff. The plaintiff would state that the defendant has denied the execution of Ex.A2 & Ex.A3 - endorsements. Despite the admission made by the defendant in his written statement that he executed the document for security purpose for the receipt of loan of Rs.1,00,000/- received from the plaintiff, the plaintiff has taken much pain to prove execution of Sale Agreement(Ex.A1) and also to prove the details of endorsements (Ex.A2 & Ex.A3).

15. Though the defendant has not denied his signatures found in Ex.A1, strangely the defendant had moved an application under Section



S.A.No.153 of 2023

45 of Indian Evidence Act, 1872, for the opinion of Handwriting Expert in respect of the defendant's signatures found in Ex.A1. The trial Court, allowed the application and the handwriting Expert has given her report to the effect that the signatures found in Ex.A1-Sale Agreement do not match with the admitted signatures. The Trial Court, without invoking Section 73 of the Indian Evidence Act, 1872, straightaway accepted the report of the evidence of P.W.4 handwriting Expert and concluded that the defendant did not execute the sale agreement at all. But the defendant in his written statement itself would plead that he signed in a loan document as the security for the loan obtained from the plaintiff.

16. But the First Appellate Court has gone through the evidence of P.W.4 and her reasoning sheet as well as by invoking Section 73 of Indian Evidence Act, has given a finding that the signatures found in Ex.A1 and the signatures found in Ex.A2 and Ex.A3 endorsements are that of defendant.

17. During the cross examination of P.W.1, he reiterated the fact that, at the time of execution of Agreement of Sale, defendant received the advance amount of Rs.1,27,000/- in the presence of Valliammal (wife of defendant). During the cross examination of D.W.1, it was again acceded by the defendant that the signature found in first page of Ex.A1 is his



signature and that the other signatures found in the sale agreement were denied by him. It is the evidence of P.W.1 that the endorsement details (Ex.A2 and Ex.A3) were written by him.

18. The second attester to Ex.A3 – Endorsement has been examined as P.W.2. P.W.2 would state that Ex.A3 – Endorsement details were given by the plaintiff. It is his evidence that he wrote the agreement for sale (Ex.A1) and, at the time of writing Ex.A3 - endorsement, defendant's son Gopinath, was present and the defendant received a sum of Rs.40,000/- towards the balance sale consideration in the presence of defendant's son Gopinath and other witnesses. P.W.2 has further deposed that the defendant again signed in Ex.A3 – Endorsement and that the defendant's son Gopinath, attested the said endorsement (Ex.A3).

19. During the cross examination of P.W.2, he has clearly spoken about every details pertaining to Ex.A3 - Endorsement said to have been made on 10.12.2011 (Saturday). As regards the receipt of Rs.40,000/- by the defendant, he would state that the defendant received 400 numbers of 100 rupee notes.



S.A.No.153 of 2023

20. It is the evidence of P.W.3 that he is the first attester to the sale agreement. K.C.Jeyachandran, who died before four years. He would also depose that the defendant received a sum of Rs.1,27,000/- as advance in the presence of witnesses. K.C.Jeyachandran and his wife Valliammal executed the Sale Agreement thereafter. Both witnesses attested the sale agreement and the defendant appended his signature and seal affixed in the sale agreement. He would reiterate that he is only a scribe of the sale agreement. The handwriting Expert has been examined as P.W.4. He would state that the disputed signatures do not match with admitted signatures. On a careful perusal of Ex.A1- Sale Agreement, endorsement details (Ex.A2 & Ex.A3) and the signatures of the defendant found in both exhibits when they are compared with that of defendant's signature found in the first page of Ex.A1- sale Agreement, coupled with the evidence of P.W.1 to P.W.3, it is clear that all the signatures found in Sale Agreement and endorsement details are that of the defendant.

21. It is relevant to note that in the sale agreement, the second attester is the wife of the defendant, who has affixed her thumb impression. Likewise in Ex.A3 – Endorsement's details, the first attester is the son of the defendant V.Gopinath. The above further details show that no denial is made in the written statement about their signature or in the



S.A.No.153 of 2023

evidence of D.W.1. For the said reasons, this Court concurs with the view of the First Appellate Court and concludes that the sale agreement is a true and valid document.

22. As regarding the willingness to perform his part of contract, the sale agreement was executed on 01.10.2007, though the time limit agreed between the parties was three months. The fact that the defendant has received a sum of Rs.10,000/- on 13.12.2009 and on 10.12.2011 having received a further sum of Rs.40,000/- towards the sale agreement (Ex.A2 and Ex.A3) would reflect the fact that the defendant is not adhering to the time limit as per Ex.A1 to Ex.A3. Time is not the essence of the contract. Out of total sale consideration, the remaining amount of Rs.1,50,000/- is to be paid to the defendant.

23. Law is well settled that the vendee need not jingle coin in order to prove his financial capacity. It is also not the case of the defendant that the plaintiff does not have financial capacity to pay the remaining sale consideration.

25. It is the evidence of P.W1 that as agreed upon the defendant was protracting to obtain the possession receipt and the Judgment copy



S.A.No.153 of 2023

and he failed to produce those documents. P.W.1 insisted the defendant to execute the sale deed was not fructified. Thereafter, he issued a legal notice on 11.11.2013 calling upon the defendant to receive the balance sale consideration of Rs.1,50,000/- from him and to execute the registered sale deed in his favour. This would amply prove the fact that the plaintiff has been ready and willing to perform his part of contract.

25. For better understanding Article 54 of Limitation Act, 1963 is extracted hereunder:-

For Specific performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
--	-------------	--

26. According to Article 54 of the Limitation Act, if the date is fixed for performance of the agreement, then non- compliance of the agreement on the date would give a cause of action to file the suit for specific performance within three years from the date so fixed. In a case where, no such date is fixed in the agreement for sale, three years' limitation to file a suit for specific performance would only begin when the plaintiff noticed that the defendant has refused the performance of the agreement.



S.A.No.153 of 2023

WEB COPY

27 The plaintiff issued a legal notice on 11.11.2013, and after waiting for 10 days, thereafter the plaintiff filed the suit on 22.11.2013. The suit was laid on 20.12.2013, which is within three years from the date of Ex.A4- Legal notice. Therefore, the suit has been filed in time and not hit by the law of limitation.

28. As mentioned supra, despite the execution of document by the defendant in favour of the plaintiff having admitted in the written statement, the plaintiff by examining himself along with P.W.2 and P.W.3 coupled with Ex.A1 to Ex.A4 has established in unequivocal terms that the defendant executed a sale agreement for a sale consideration of Rs.3,27,000/- and received advance amount of Rs.1,27,000/- from the defendant on the date of Ex.A1 and also executed Ex.A2 and Ex.A3 – endorsements.

29. From the above said oral and documentary evidence, it is clearly discernible that the plaintiff has been all along ready and willing to perform his part of contract. The suit property is 0.05 cents of land abutting of Tirutani - Arakonam Main Road. The sale agreement was executed on 01.10.2007 and the sale consideration was fixed at Rs.3,27,000/-.



S.A.No.153 of 2023

WEB COPY

30. The above said details would clearly show that the plaintiff, in due compliance with Section 16 (c) of the Specific Relief Act, 1963, has proved his readiness and willingness. In consideration of the above said details, the First Appellate Court, after an elaborate discussion, has rightly come to the conclusion that the plaintiff is entitled to the relief of specific performance. This Court does not find any perversity or infirmity in the findings of the First Appellate Court. This Court also does not find any good reason to upset the findings of the First Appellate Court. Substantial questions of law are answered in favour of the plaintiff.

31. In view of the above said narrative, this Second Appeal stands dismissed. Sequel to this, Judgment and decree dated 27.09.2022 passed in A.S.No.8 of 2021 by the First Appellate Court, Tiruvallur stands confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

21.11.2025

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

kkd



WEB COPY



S.A.No.153 of 2023

R.KALAIMATHI, J.,

kkd

To

1. I Additional District Court, Tiruvallur.

2.The Subordinate Court, Tiruttani.

S.A.No.153 of 2023

21.11.2025