



A.S.No.60 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :25.07.2025

Pronounced on : 08.08.2025

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Appeal Suit No.60 of 2022

and

C.M.P.No.2258 of 2022

1.D.Dhatchnamurthy, age 62
S/o Mr.Devaraj,
Door No.53B/138, Ayyankula Street,
Thiruvannamalai Town,
Thiruvannamalai Circle and District.

2.P.Dhandapani, Age 47,
S/o Mr.Palani,
Door No.2/27, Therku Street,
Kazhumaram Village,
Thirukoilur Circle, Villupuram District.

..Appellants/2nd and 3rd Defendants

/versus/

1.N.Sivakumar, Age 40
S/o Narayanasamy,
Eeradi Village, Pavupattu Madura,
Thiruvannamalai Circle and District.

..Respondent/Plaintiff



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2.M.Elumalai, Age 41,
S/o Munusamy,
Door NO.56/B,Ayyankula Street,
Thiruvannamalai Town,
Thiruvannamalai Circle and District.

..2nd Respondent/1st Defendant

Prayer: Appeal Suit has been filed under Order XLI, Rule 1 and 2 r/w Section 96 of Civil Procedure Code praying to set aside the judgment and decree dated 24.11.2021 passed in O.S.No.70 of 2017, on the file of the Additional District Judge, Thiruvannamalai and dismiss the suit with through cost.

For Appellants :Mr.D.Senthilkumar
For Respondents :Mr.B.Jawahar for R1
No appearance for R2

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J U D G M E N T

Suit for specific performance or for the alternate relief to refund the advance amount of Rs.20,50,000/- and costs.

2. The suit property owned by the first defendant Elumalai, who purchased the property on 25.03.2011, under a registered sale deed. He entered into an unregistered sale agreement with the plaintiff, Sivakumar on

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01.03.2017. The sale consideration was fixed as Rs.23,00,000/- and advance of Rs.20,50,000/- paid on the date of the sale agreement. The parties agreed to complete the transaction within a period of eight months.

3. The plaintiff was ready to tender the balance sale consideration of Rs.2,50,000/- and willing to perform his part of contract. He requested the defendant to receive the balance sale consideration and execute the sale deed. The defendant was evasive. Later, the plaintiff came to know that the first defendant in order to fraud him had entered into a power of attorney in favour of the second defendant, Dhatchnamurthy and Elumalai entered as an agent of the first defendant and created a sale agreement on 27.06.2017 in favour of the third defendant, Dhandapani, immediately he rushed to the Court for the above said relief. The first defendant, owner of the property and the second defendant is power agent contested the suit, whereas the third defendant, who had subsequently registered agreement for sale dated 27.06.2017, absent and filed written statement wherein he has denied the execution of sale agreement 01.03.2017 in favour of the plaintiff.



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WEB COPY 4. According to him, the first defendant borrowed a sum of Rs.7,00,000/- from the plaintiff and the suit agreement for sale was executed only as a security for the loan on 12.05.2017. After discharging the loan, he requested the plaintiff to return the original documents. However, the plaintiff made excuses to produce the original document on the protest that the documents were kept in bureau and the key is lost. Trusting the plaintiff, he did not further insist for return of the documents. Thereafter, he executed a general power of attorney in favour of the second defendant on 16.06.2017 in respect of the suit property. The power agent is the second defendant and the first defendant had executed a registered sale agreement on 27.06.2017 for a consideration of Rs.20 lakhs and received advance of Rs.5 lakhs from the third defendant. After knowing that the first defendant through his power agent had agreed to sell the property and received part sale consideration in order to defeat the rights of the first defendant as well as the intended purchaser, the third defendant, the suit has been filed. In the course of trial, the first defendant also did not participate and was also declared exparte.



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5. Based on the pleadings the following Issues were framed by the trial Court:

(i) Whether the plaintiff is entitled for the relief of specific performance on the basis of the sale agreement dated 01.03.2017?

(ii) Whether the plaintiff is entitled the alternative relief of refund of the advance amount of Rs.20,50,000/-?

(iii) To what other relief?

6. To his case, the plaintiff Sivakumar, was examined as PW1 and marked three exhibits, namely the unregistered agreement of sale executed by the first defendant in favour of the plaintiff on 01.03.2017 as Ex.A1, copy of the power of attorney deed executed by the first defendant in favour of the second defendant dated 16.06.2017 as Ex.A2 and the copy of the agreement of sale executed by the second defendant in favour of the third defendant dated 27.06.2017. On behalf of the defendants, the second defendant, Dhatchnamurthy was examined as DW1. No exhibits relied by



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7. Trial Court held that the plaintiff is entitled to the relief of specific performance of the suit agreement for sale. The plaintiff was directed to pay the balance sale consideration of Rs.2,50,000/- and get the sale deed registered. Being aggrieved, the second defendant, the power agent of the first defendant and the third defendant, who is the agreement holder through the power agent of the first defendant, jointly preferred the appeal suit, which is now under consideration.

8. The point for determination, which arose in the first appeal:

Whether the plaintiff had proved his wherewithal to advance Rs.20,50,000/- on 01.03.2017 and in the absence of any specific pleading regarding the passing of consideration and readiness and willingness, can the trial Court pass a decree for specific performance, even without framing an issue regarding readiness and willingness?



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9. In the cross examination of PW1, he deposed that the advance of Rs.20,50,000/- paid to the first defendant by cash on 01.03.2017. The source of money has been raised by the plaintiff from the property and sold on 26.05.2016. He further deposed that at the time of payment, his friends viz., Sivakumar and Paramasivam were present. He did not deposit the money in the bank and it was kept in his house as cash from 26.05.2016 till 1.03.2017 and they said explanation and source of the money not supported by oral evidence or documentary evidence. The only witness examined by the plaintiff is one Paramasivam, apart from the plaintiff. He in the chief examination has deposed that at the time of executing the sale agreement dated 01.03.2017, the original title document was pledged in a private finance company at Tiruvannamalai, by the first defendant, and therefore the sale agreement was not registered and the sale consideration of Rs.20,50,000/- was given to the first defendant, at his residence, in the presence of witnesses, including him. In the cross-examination also, it is reiterated that the transaction of Ex.A1 was at the residence of the first



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defendant on 01.03.2017 between 10.30a.m to 11.00 a.m and the money was given to the first defendant at 12.00p.m. Hundred rupees denomination admits that in the prepared document, he affixed his signature at Taluk office. Admitted that he had no knowledge whether the mortgage loan with the private finance company at Tiruvannamalai was cleared by the first defendant. He is not aware whether the plaintiff called upon the first defendant to complete the sale transaction.

10. The learned Counsel for the appellants pointing out the contradiction between the testimony of PW1 and PW2 regarding the place at which transaction took place and the denomination of the currency given to the first defendant and the additional documents sought to be introduced at the time of the appeal through an application, under Order 41 Rule 27 of CPC argued that the loan of the first defendant was cleared by the third defendant after entering agreement with the first defendant through the second defendant power agent, and for some reason, the documents could not be produced during the trial and if those documents are admitted in



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evidence, it will clearly establish that the second defendant on behalf of the first defendant entered into an agreement with the third defendant and from the advance received from the third defendant, the mortgaged loan was cleared and all the original deeds are with the third defendant. The plaintiff having failed to prove passing of consideration for the sale transaction, has duly established through cogent evidence that the agreement for sale Ex.A1 was nominal without actual passing of the consideration mentioned in it and was created only for the purpose of security for the loan availed by the first defendant and also being an unregistered document for sale of a removal property. The Court below ought to have dismiss the suit or should allowed only the alternate relief fastening the liability on the first defendant to repay the money received.

11. In response to the said submission, the learner counsel appearing for the first respondent/decree holder/plaintiff submitted that the power agent cannot speak against his principal under the new documents sought to be introduced in piece. At the stage of appeal, is not permissible to receive



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document, the first respondent has filed a detailed counter opposing the set applications stating that the decree is primarily against the first defendant and it was not chosen to file the appeal and remained exparte. The second defendant, who is the agent of the first defendant, is alone contested the suit. The third defendant is only a lender and a copy of the agreement of sale executed by the second defendant in favour of the third defendant was marked as Ex.A3. He has not given any evidence regarding the payment of an advance of Rs.5 lakhs on 26.05.2017 as past consideration for the property allegedly agreed to be sold to the third defendant. Now, this appears to be introduced or an after thought, not pleaded earlier and pertains to the facts that does not form part of the pleadings.

12. He deposed that he did not know about the agreement between the first defendant and the plaintiff directly. If further admitted in the cross-examination that the defendant borrowed from the plaintiff a sum of Rs.7 lakhs in the month of March 2017, with an understanding to repay the loan within three months. He was present at the time of advancing the loan. The



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loan transaction was reduced into writing on a Rs.20 stamp paper and the money was paid at the residence of plaintiff.

13. The plaintiff had sought for specific performance based on Ex.A1, which is an unregistered agreement for sale dated 01.03.2017. In his plaint, he had stated about the execution of the agreement for sale, total consideration of Rs.23,00,000/- and substantial payment of Rs.20,50,000/- on the date of agreement with eight months period to complete the transaction. He has further pleaded that he was repeatedly requesting the defendant to receive the balance sale consideration and execute the sale deed. Later, he came to know about an attempt made by the first defendant to alienate the property through the second defendant as power of attorney and the agreement for sale by the second defendant with the third defendant on 27.06.2017. The registered power of attorney deed dated 16.06.2017 by the first defendant in favour of the second defendant is marked as Ex.A2 and the certified copy of the agreement for sale executed by the second defendant in favour of the third defendant is marked as Ex.A3. In his plaint,



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the plaintiff had not disclosed about the earlier encumbrance with a Private Finance Company at Tiruvannamalai. This is spoken only when the witnesses for the plaintiff mounted the witness box. The suit has been laid directly without any written communication to the defendants calling upon him to execute the sale deed. As per Ex.A1, time for performing the contract is eight months, which expired on 31.10.2017. The plaint presented before the Principal District Court, Tiruvannamalai on 09.10.2017. Meanwhile, the first defendant had given power of attorney to the second defendant on 16.06.2017 and the said power of attorney had entered into an agreement for sale with the third defendant on 27.06.2017. These transactions are reflected by the two registered documents, which are marked as Ex.A2 and Ex.A3.

14. In the written statement filed by the second defendant, who is the power agent of the first defendant and the person, who sold the property to the third defendant, as power of attorney, had not whispered anything about the debt of the vendor, the first defendant herein and the clearance of the



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debt. The facts, which are not the part of the pleadings, have been canvassed by both the parties during the trial by way of oral evidence. With the available documents and the evidence, the trial Court had held that though the subsequent agreement is a registered agreement with the power agent, the prior agreement with the landlord directly, was not registered, even if not registered it, will prevail as per the law existing at the time of entering into the agreement. While holding so, the trial Court had omitted to frame issue regarding readiness and willingness, which is very much relevant in the present case, since the period for performing the contract fixed as eight months and the balance sale consideration was only Rs.2,50,000/-, after rendering substantial sale consideration of Rs.20,50,000/-, whether not expressing readiness and willingness before filing the suit and reason for fixing a longer date for completion of contract, not found in the plaint. Some explanations had been placed by the witnesses, but they are not supported by the documentary evidence.

15. As far as the defendants are concerned, neither the owner of the



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property nor the second agreement holder, had come before the Court to put forth their case. Except the oral testimony of the power agent, DW1, there is nothing available for the Court to appreciate the preponderance of probability.

16. Section 10 of the Specific Relief Act, 1963, deals with cases in which Specific Performance of Contract is enforceable.

In a suit for specific performance, the plaintiff must show:-

“First, that there was a concluded contract between himself and the defendant.

Second, that he had performed or was ready and willing to perform the terms of the contract on his part to be then performed.

Third, that he was ready and willing to do all matters and things on his part thereafter to be done.”

17. There is no dispute in so far as entertaining the suit for specific performance, based on the unregistered agreement for sale entered prior to Amendment of the Specific Relief At, 1963. In the appeal, certain facts are



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canvassed by the parties, particularly, the mortgage debt with M/s Sree Gokulam Chit and Finance Co.(P) Ltd., at Tiruvannamalai and the discharge of the said debt. While the second defendant claims that as a part performance he has discharged the mortgage debt and collected the originals, no reason was explained by him. This fact was not placed by him during the trial either in his written statement or while he deposed as a witness for the defendants.

18. In the written statement, the defence has been taken by the first defendant along with the second defendant that Ex.A1 was obtained by the plaintiff, when he advanced loan of Rs.7,00,000/-. This part of the pleadings has not been substantiated by the first defendant or by the second defendant by adducing evidence. The burden of proof, a particular document reduced into writing as sham and nominal, falls on the person, who deny the written document. If the first defendant has not intended to sell the property under Ex.A1, he is the best person to prove the said fact.



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However, by way of Miscellaneous Petitions under Order 41, Rule 27 of C.P.C., an attempt was made to introduce the documents, which would lead to inference that even if at that time, Ex.A1 came into existence, the property was already encumbered by a registered mortgage of title deed with the financier.

20. This Court is of the firm view that any person, who knocks the door of justice, should come with clean hands. Placing facts in peace meal, suppressing material fact and force the Court to remove the shaft from the grain, can only be in an exceptional cases, a deliberate suppression of facts on either side and obvious and intentional, abstain from the proceedings by the interested parties cannot be considered as innocent omission. In a case, where a valuable property involved, the owner of the property (first defendant) or the agreement holder under the registered document, are set exparte. The person, who alleged to have entered into the unregistered agreement for sale is the third defendant and the power of attorney of the



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first defendant alone are contesting. They have not placed the entire documents and facts, which were in their knowledge, before the Court. After making a mock fight before the trial Court, at the appellate stage, entirely new facts are trying to be substituted to the pleadings found in the plaint and written statement. The plaintiff has to suffer for not disclosing his ready and willing either by conduct or by pleadings. At the same time, the third defendant, who has not proved his bonafideness cannot claim any advantage. The second defendant, who is the appellant before this Court, for the first time, projected himself as a power of attorney holder, coupled with interest to prove the same, he wants to file additional documents. In the absence of specific pleadings in his written statement, the appellants cannot by way of additional documents, substitute their pleadings, contrary to their earlier written statement. Strangely, in this case, the third defendant has remained *ex parte* and there is no material to show that he had expressed any interest to perform his contract and complete the transactions as per Ex.A3.

21. This is a classic case, where the parties want to canvass the facts



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which are not part of their pleadings. In view of this Court, the evidence of PW-1 and Ex.A1 to Ex.A3 relied by the plaintiff, not sufficient to grant relief of specific performance. The trial Court miserably failed to frame issue regarding readiness and willingness. Without any evidence to show that the plaintiff, after entering into the agreement on 01.03.2017, had made any attempt either to clear the loan of the vendor or attempt to tender the balance price money, the Court below had granted the relief of specific performance.

22. In V.S.Ramakrishnan v. P.M.Muhammed Ali, reported in [2022 Livelaw (SC) 935], the Hon'ble Supreme Court has held as below:-

“4.1 Now the findings and the reasoning given by the learned Trial Court refusing to pass a decree for specific performance is concerned it appears that though there was no specific issue framed by the learned Trial Court on readiness and willingness on the part of the plaintiff, the Trial Court has given the findings on the same and has non-suited the plaintiff by observing that the plaintiff was not having sufficient funds to make the full balance consideration on or before 12.01.2006. Such a finding could not have been given by the learned Trial Court



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without putting the plaintiff to notice and without framing a specific issue on the readiness and willingness on the part of the plaintiff. There must be a specific issue framed on readiness and willingness on the part of the plaintiff in a suit for specific performance and before giving any specific finding, the parties must be put to notice. The object and purpose of framing the issue is so that the parties to the suit can lead the specific evidence on the same. On the aforesaid ground the judgment and order passed by the learned Trial Court dismissing the suit and refusing to pass the decree for specific performance of the agreement to sell confirmed by the High Court deserves to be quashed and set aside and the matter is to be remanded to the learned Trial Court to frame the specific issue with respect to the readiness and willingness on the part of the plaintiff. On remand the parties be permitted to lead the evidence on the readiness and willingness on the part of the plaintiff to perform his part of the contract, more particularly, whether the plaintiff was ready and willing to pay the full consideration and whether the plaintiff was having sufficient funds and/or could have managed the balance sale consideration.”

23. *In Shenbagam and others v. K.K.Rathinavel reported in 2022*



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WEB COPY *Livellaw (SC) 74, the Hon'ble Supreme Court has observed as below:*

“25.All the three courts, including the High Court, grossly erred in the manner in which they have adjudicated upon this dispute in a suit for specific performance. In the first instance, the trial court failed to frame an issue on whether the respondent-plaintiff was ready and willing to perform his obligations under the contract and instead assessed whether he is entitled to the relief of specific performance. In doing so, the trial court viewed the legal issue from an incorrect lens. The foundation of a suit for specific performance lies in ascertaining whether the plaintiff has come to the court with clean hands and has, through his conduct, demonstrated that he has always been willing to perform the contract. There is a conspicuous absence in judgment of the trial court of any reference to evidence led by the respondent to indicate his willingness to perform the contract. The trial court merely adverted to “document produced on behalf of the plaintiff” and concluded that he had sufficient means to purchase the suit property. Apart from this observation, the judgment fails to analyse the terms of the agreement, the obligations of the parties and the conduct of the respondent or the appellant.

26. In evaluating whether the respondent was ready and willing to perform his obligations under the contract, it is not only necessary to view whether he had the financial capacity to pay the balance consideration, but also assess his conduct throughout the transaction.”



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24. It is well settled by catena of judgments by the Hon'ble Apex Court as well as this Court that the readiness and willingness are distinct facts, while readiness is the capacity to mobilise fund, willingness is the mental attitude to purchase the property. For granting decree of specific performance, the plaintiff should specify both readiness and willingness. Prior to the Amendment of Section 16(c) of the Specific Relief Act, 1963, a person, who seeks specific performance, has to plead and prove, ready and willing.

25. Section 20 of the Specific Relief Act, 1963 confers discretion and power of the Court. In case of specific performance suit, the Court has to grant relief of specific performance, not arbitrary, but on sound and reasonable judicial principle.

26. PW-2 in his evidence admits that in Ex.A1, agreement, there is a specific recital that the the vendor (first defendant) has to clear the mortgage



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loan availed from M/s Sree Gokulam Chit and Finance Co.(P) Ltd., at Tiruvannamalai, within a period of eight months and execute the sale deed without any encumbrance in the property, but he had admitted that after paying advance of Rs.20,50,000/-, he did not follow with the vendor the first defendant, whether the said loan with M/s Sree Gokulam Chit and Finance Co.(P) Ltd., at Tiruvannamalai was discharged by him. This admission by the plaintiff proves his conduct that he was not willing to perform his part of contract.

27. In the said circumstances, the plaintiff ought not to have been granted decree of specific performance but only the alternate relief of refund of money advance with reasonable interest. Hence, this Appeal Suit is partly allowed by modifying the advanced, till specifies the decree there shall be a charge over the suit property.

28. As a result, **this Appeal Suit is partly allowed**. The decree of specific performance to enforce the agreement for sale dated 01.03.2017 is

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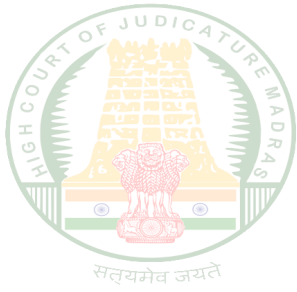
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set aside. Alternate relief of refund of advance money of Rs.20,50,000/- with interest at the rate of 24% p.a, from the date of agreement i.e 01.03.2017, till the date of suit i.e. on 09.10.2017. Thereafter, interest at the rate of 12% p.a., from the date of suit (i.e.) 09.10.2017 till the date of decree(i.e) 24.10.2021 and thereafter, the interest at the rate of 6% p.a., from the date of decree (i.e) 24.10.2021 till the date of realisation. Consequently, connected Miscellaneous Petition is closed. No costs.

08.08.2025

Index : Yes
Neutral citation : Yes/No
Speaking/non-speaking order
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To

- 1.The Additional District Court, Tiruvannamalai.
- 2.The Section Officer,V.R.Section,High Court,Madras.



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Dr. G.JAYACHANDRAN, J.,

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Pre-delivery Judgment made in
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and
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08.08.2025