



S.A.No.260 of 2018
and C.M.P.No.6670 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2025

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.260 of 2018
and C.M.P.No.6670 of 2018

Murugan

... Appellant

Vs.

1. Bharath

2. Pachaiyammal

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 22.12.2017 passed in A.S. No.25 of 2016 on the file of the District Court, Tiruvannamalai, upholding the decree and judgment dated 03.06.2016 passed in O.S.No.86 of 2013, on the file of the Principal Sub Court, Tiruvannamalai.

For Appellant	: Mr.P.Sumitra for Mr.V.Prakash Babu
For R1	: Mr.P.G.Thiyagu
For R2	: No appearance



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JUDGMENT

The appellant is the first defendant in O.S.No.86 of 2013, on the file of the Principal Sub Court, Tiruvannamalai. The first respondent / plaintiff filed the suit for specific performance of contract and for costs.

2. For the sake of convenience, the parties are referred to as per their rank in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3. The case of the plaintiff in a nutshell is as follows :

The plaintiff is a milk vendor. He used to visit Kottavur Village to collect milk from the villagers. The first defendant was doing business of hiring out lorry. Since he incurred a heavy loss in his business and indebted to the extent of Rs.10,00,000/-, he wanted to sell his land in Survey Number 33/10 of Tiruvannamalai District measuring 0.07 cents to the plaintiff. A registered agreement of sale dated 06.08.2010 (Ex.A1) was entered into between the plaintiff and the first



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defendant for a sale consideration of Rs.2,10,000/-. The plaintiff agreed to purchase the building in the suit property for Rs.30,000/- and the entire site for Rs.1,80,000/-. Thus the total sale consideration was fixed as Rs.2,10,000/- out of which, a sum of Rs.2,00,000/- was paid towards advance on the date of the execution of the sale agreement. The first defendant also entrusted the original title deed with the plaintiff. As per the terms of the sale agreement (Ex.A1), the plaintiff should pay the balance sale consideration of Rs.10,000/- within one year from the date of execution of the sale agreement. However, the first defendant was not available in the village on account of threat from various creditors. The plaintiff was willing to pay the balance sale consideration of Rs.10,000/- within three months from 06.08.2010. Later, the plaintiff could not find out the whereabouts of the first defendant. Thereafter, the plaintiff issued a legal notice dated 26.03.2013 (Ex.A3) to the first defendant requesting him to receive the balance sale consideration of Rs.10,000/- and execute the sale deed in his favour. The second defendant, the wife of the first defendant received the said notice as is evidenced by the postal acknowledgment card (Ex.A4). However, the first defendant did not



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WEB COPY come forward to execute the sale deed in favour of the plaintiff and fulfill his part of the contract. Hence, the plaintiff was constrained to file the suit.

4. The suit was resisted by the first defendant on the following grounds:

- i. The suit property is worth more than Rs.5,00,000/-. The first defendant never intended to sell the suit property to the plaintiff for a meagre amount of Rs.2,10,000/-.
- ii. The first defendant borrowed a sum of Rs.2,00,000/- from the plaintiff and since the plaintiff compelled the first defendant to execute the sale agreement, he was forced to sign the sale agreement.
- iii. The first defendant was regularly paying interest of Rs.6,000/- per month for about six months.
- iv. In any event, the suit is barred by limitation since the suit has not been filed within three years from the date of the sale agreement.
- v. Moreover, the plaintiff was not ready and willing to perform his



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- vi. The second defendant in her written statement has stated that the first defendant was not taking care of his family and when this was questioned by the second defendant (wife of the first defendant) the first defendant absconded from the village.
- vii. Taking advantage of this position, the plaintiff created a forged sale agreement (Ex.A1). Hence, the suit is liable to be dismissed.

5. On the basis of the above pleadings, the trial Court framed the following issues :

- "i. Whether the suit sale agreement was executed by the first defendant ?*
- ii. Whether the second defendant is an unnecessary party in the suit ?*
- iii. Whether the plaintiff is ready and willing to perform his part of the contract ?*
- iv. Whether the plaintiff is entitled for the suit claim as prayed for ?*
- v. To what relief is the plaintiff entitled ?"*



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6. In the trial Court, the plaintiff examined himself and marked Ex.A1 to Ex.A4. The first defendant examined himself and one another witness. However, no documentary evidence was adduced on the side of the defendants.

7. The learned trial court judge, on considering the evidence on record, decreed the suit in favour of the plaintiff vide his decree and judgment dated 03.06.2016, on the following grounds :

- i. The sale agreement dated 06.08.2010 (Ex.A1) is a registered instrument.
- ii. The total sale consideration as per Ex.A1 is Rs.2,10,000/- out of which, the plaintiff has paid a sum of Rs.2,00,000/- to the first defendant.
- iii. The first defendant had admitted during the course of cross examination that he executed the sale agreement (Ex.A1).
- iv. Though the first defendant had contended that he never intended to sell the suit property in favour of the plaintiff, the same has not



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been established. In fact, the first defendant has not also established that he was making payment of Rs.6,000/- per month towards interest, to the plaintiff.

- v. The first defendant had also handed over the parent documents pertaining to the suit property to the plaintiff.
- vi. Since the suit is filed within three years from the date fixed for the performance of contract, the suit is not barred by limitation as alleged by the first defendant.
- vii. It was established by the plaintiff that the first defendant absconded from the suit village and was not available for completing the transaction within the period stipulated in the sale agreement (Ex.A1).
- viii. As far as the immovable properties are concerned, time is not the essence of the contract. The plaintiff has also deposited the balance sale consideration of Rs.10,000/- on 07.08.2016. Thus he has proved that he was always ready and willing to perform his part of the contract. Hence, the suit filed by the plaintiff is liable to be decreed.



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8. Aggrieved over the decree and judgment passed by the trial court judge, the first defendant filed an appeal in A.S. No.25 of 2016 before the District Court, Tiruvannamalai. The learned District Judge, Tiruvannamalai after analysing the oral and documentary evidence on record, concurred with the findings recorded by the trial court judge, vide his decree and judgment, dated 22.12.2017 as against which, the present second appeal is filed by the first defendant.

9. At the time of admission the following substantial questions of law were framed by my learned predecessor :

"i. Are the Courts below right in granting the discretionary relief in the absence of proof, readiness and willingness?

ii. Are the Courts below right in justifying the finding that the suit is not barred by limitation?

iii. Are the Courts below right in granting the discretionary relief of specific performance in the absence of details of the house constructed in the suit property?"



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10. Heard Ms.P.Sumitra, learned counsel for the appellant and Mr.P.G.Thiyagu, learned counsel for the first respondent.

11. Ms.P.Sumitra, learned counsel appearing for the appellant contended that the first defendant in his written statement had clearly averred that he borrowed money from the plaintiff and that he was actually paying a sum of Rs.6,000/- per month towards interest to the plaintiff. Therefore, he did not have the intention of selling the suit property in favour of the plaintiff. It is her further submission that the suit filed by the plaintiff in the year 2016 is hopelessly barred by limitation under Article 54 of the Limitation Act. In this regard, she relied on the decision of the Hon'ble Supreme Court in ***Usha Devi and Others vs Ram Kumar Singh and Others*** in ***Civil Appeal No.8446 of 2024*** and contended that the period of one year mentioned in the sale agreement (Ex.A1) expires on 06.08.2011 and the suit has been filed only in the year 2016. Therefore, as per Article 54 of the Limitation Act the suit has not been filed within three years.



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12. Per contra Mr.P.G.Thiyagu, learned counsel appearing for the first respondent contended that both the Courts below after analysing the evidence on record had decreed the suit in favour of the plaintiff. It is also his contention that the suit is not barred by limitation as the plaintiff issued notice within three years from the date of expiry of the period mentioned in the sale agreement (Ex.A1) and filed the suit thereafter within three years. It is his further contention that both the Courts below had properly analysed this aspect and therefore, no interference is called for in the present second appeal.

13. At the outset it may be observed that the plaintiff had filed the suit for specific performance of contract dated 06.08.2010 (Ex.A1) entered into between him and the first defendant. The said contract is registered and the sale consideration was fixed as Rs.2,10,000/- out of which, a sum of Rs.2,00,000/- was paid towards advance by the plaintiff. The balance sale consideration should be paid within one year from the date of sale agreement. The first defendant in his written statement had



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WEB COPY contended that he borrowed a sum of Rs.2,00,000/- from the plaintiff and also paid interest at the rate of Rs.6,000/- per month and that at the instance of the plaintiff, he signed the sale agreement (Ex.A1) and he never intended to sell the suit property. However, the first defendant has not adduced any acceptable evidence to substantiate his contention that he was paying interest at the rate of Rs.6,000/- per month to the plaintiff.

14. It is seen from the evidence adduced on both sides that the first defendant was not available in the suit village. In fact, the second defendant in her written statement had admitted that the first defendant absconded and she could not find out the whereabouts of the first defendant. The plaintiff had issued the suit notice (Ex.A3) to the first defendant's address and it was received by the second defendant. Since there was no response, the plaintiff has filed the suit for specific performance of contract in the year 2016. He also remitted the balance sale consideration of Rs.10,000/- in the trial court.



15. The main contention of the first defendant is that the suit is barred by limitation. In this regard, it is necessary to extract Article 54 of Limitation Act which reads as under :

<i>Description of suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
<i>For Specific Performance of a Contract</i>	<i>Three Years</i>	<i>The date fixed for the performance or contract. (2) if no such date is fixed, when the plaintiff has notice that performance is refused.</i>

The limitation under Article 54 of the Limitation Act, 1963 for instituting a suit for specific performance of a contract would be three years from the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. In the instant case, the date of agreement is 06.08.2010 and the time fixed for the performance of contract is one year. The first defendant was not available in the suit village and therefore, the plaintiff has issued the legal notice to the



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address of the defendants within three years from the date mentioned in the sale agreement and thereafter, the suit was filed within three years. Thus the suit is not barred by limitation and the decision of the Apex Court in ***Usha Devi and Others vs Ram Kumar Singh and Others*** (cited supra) relied on by the learned counsel for the appellant would not apply to the facts of the present case.

16. A perusal of the records shows that the plaintiff was ready and willing to perform his part of the contract through out the period of contract and thereafter, he had also deposited the balance sale consideration of Rs.10,000/-. The trial court had analyzed all these aspects and had observed thus :

"21) It is settled law that in a case of specific performance of contract relating to immovable property time is not generally the essence of contract but there are certain exceptions for the same. Equity will not assist when there has been undue delay on the part of the plaintiff who is a party with the contract and in spite of notice given by the other party, the defendant is already failed to complete the contract within the stipulated time. The



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court of equity shall give no assist to the wrong doer by granting the equitable relief. But in the present case, the first defendant was absconding from the suit village and not available for completing the transaction. On the other hand the plaintiff was repeatedly approaching the second defendant to execute the document and issued notice to her. No reply was sent. For the first time before the suit the first defendant and the second defendant had come forward with a plea that the suit is barred by limitation as the time is the essence of contract. By seeing the summons sent to the first defendant, this court finds that the first defendant was not available in the suit village and only after publication, he appeared through his counsel and all along he was secluding himself from the clutches of the creditors by leaving away from the suit village. In these circumstances, the first defendant cannot be allowed to take the defence that time is essence of the contract and the plaintiff had not approached the court in time. The first defendant was leaving away from the suit village. Therefore, the plaintiff cannot be blamed for delay in approaching the court and the first defendant cannot take advantage of his own wrong and he cannot raise the plea of limitation.



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22) On the first hearing date the plaintiff had deposited the balance sale consideration and successfully proved his case through oral and documentary evidence that he was all along ready and willing to perform his part of contract. On the other hand, the first defendant did not oblige the contract and refused to register the document. None of the contentions raised by the defendant are legally sustainable. Hence this court finds that the first defendant had agree to sell the suit property and it was duly executed in favour of the plaintiff after receiving the sale consideration of Rs.2,00,000/-. Hence the suit sale agreement is true, valid and binding on the first defendant. The contention raised by the first defendant that it was executed towards security for the loan transaction has not been proved to the satisfactory extent by letting in sufficient oral evidence. The payment of interest of 6 months has not been proved by the first defendant and no reasons have been given by the first defendant for handling over of the original settlement deed to the plaintiff as well as for not discharging the loan amount till date. Hence Issue No.1 is answered in favour of the plaintiff and against the first defendant."



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WEB COPY 17. Both the Courts below by their well reasoned judgments had analysed each and every aspect of this case and had given a finding that the plaintiff is entitled for specific performance of contract. Therefore, the substantial questions of law are answered against the appellant.

18. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.
- ii. the decree and judgment dated 22.12.2017 passed in A.S. No.25 of 2016 on the file of the District Court, Tiruvannamalai, and the decree and judgment dated 03.06.2016 passed in O.S.No.86 of 2013, on the file of the Principal Sub Court, Tiruvannamalai, are upheld.
- iii. the suit in O.S.No.86 of 2013, on the file of the Principal Sub Court, Tiruvannamalai, is decreed with costs.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

1. The District Court, Tiruvannamalai.
2. The Principal Sub Court, Tiruvannamalai.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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