



WEB COPY



S.A. Nos.1234 to 1236 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2025

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

S.A. Nos.1234 to 1236 of 2012

G.S.Prasannakumar

.. Appellant in all cases

Vs.

1.T.M.Govindasamy Naicker (died)

2.G.Mageshwari

.. Second respondent in all cases

(R1 died, R2 is brought on record as legal heir of the deceased R1 vide Court order dated 28.02.2024 made in C.M.P. Nos.28729, 28720 & 28728 of 2023 in S.A. No.1234 of 2012, C.M.P. Nos.28711, 28713 & 28714 of 2023 in S.A. No. 1235 of 2012 and C.M.P. Nos.28715, 28718 & 28717 of 2023 in S.A. No.1236 of 2012)

Prayer in all cases: Second Appeals filed under Section 100 C.P.C. against the judgment and decree dated 17.11.2011 made in A.S. Nos.9 to 11 of 2011 on the file of District Judge, District Court No.II, Kanchipuram confirming the judgment and decree dated 17.06.2011 made in O.S. Nos.199 of 1995, 169 of 2007 & 168 of 2007 on the file of Sub Court, Kanchipuram.

For appellant in all cases

: Mr.S.Mukunth,
Senior Counsel



S.A. Nos.1234 to 1236 of 2012

For second respondent in all cases : Mr.M.Sriram
R1 died

COMMON JUDGMENT

These Second Appeals have been filed, challenging the judgment and decree made in A.S. Nos.9 to 11 of 2011 on the file of District Judge, District Court No.II, Kanchipuram confirming the judgment and decree dated 17.06.2011 made in O.S. Nos.199 of 1995, 169 of 2007 & 168 of 2007 on the file of Sub Court, Kanchipuram respectively.

2.The plaintiff in O.S. No.199 of 1995 is the plaintiff in O.S. No.168 of 2007 also. The defendant in both the suits, namely, O.S. Nos.199 of 1995 and 168 of 2007 is the plaintiff in O.S. No.169 of 2007. The suit in O.S. No.199 of 1995 has been filed for specific performance. The other suits have been filed for permanent injunction. In O.S. No.199 of 1995, the Trial Court has partly decreed the suit in granting the alternative relief of refund of the advance amount and has dismissed the suit in other respects. O.S. No.168 of 2007 was dismissed and O.S. No.169 of 2007 was decreed and the relief of permanent injunction was granted by the Trial Court. Aggrieved party in all the three suits has preferred three Appeal Suits in



S.A. Nos.1234 to 1236 of 2012

A.S. Nos.9 to 11 of 2011, which were also dismissed. However, the First Appellate Court, in A.S. No.9 of 2011, has slightly modified the decree by granting 9% interest on the refund of the advance amount. Challenging the same, the plaintiff in O.S. Nos.199 of 1995 & 168 of 2007 and defendant in O.S. No.169 of 2007 has filed these three Second Appeals. As the aggrieved party is one and the same in all these Second Appeals and the parties to the proceedings are also same in all these Second Appeals, a common judgment is delivered in all these Second Appeals.

3.The short facts pleaded by the plaintiff in O.S. No.199 of 1995 in his plaint are as follows:

a)The defendant approached the plaintiff for selling his landed properties for a sale consideration of Rs.1,00,000/-, for which the plaintiff has also agreed and amenable to the purchase of the same for the said consideration. In view of the sale agreement between the plaintiff and the defendant, the agreement of sale has been executed on 04.08.1993 for a sale consideration of Rs.1,00,000/-. A sum of Rs.40,000/- has been paid to the defendant by the plaintiff as advance and time limit has been fixed as 30.12.1993. In the sale agreement, the defendant stood as first party and the



S.A. Nos.1234 to 1236 of 2012

plaintiff stood as second party. In the first page of the sale of agreement dated 04.08.1993, the time fixed for completion of the regular sale deed with due registration was wrongly typed as 30.12.1993 instead of 31.12.1993, which was correctly mentioned at second page of the said sale agreement;

b)Though the plaintiff was ready and willing to get the sale deed executed before 31.12.1993 by paying the sale consideration, the defendant has evaded to complete the transaction. Despite request made by the plaintiff through his representative by name Vijayaraghavan and his father S.G.Sohanraj and his Office Clerk by name T.Kannan, the defendant did not come forward to complete the sale transaction. The defendant was hospitalised on 27.12.1993 and 28.12.1993. The plaintiff approached the defendant with the balance sale consideration, but the defendant has received only Rs.1,000/- from the plaintiff for his hospital expenses by stating that he will complete the sale transaction before pongal, after discharged from the hospital;

c)On the date of sale agreement itself, the defendant agreed to hand over possession of the suit property and also the document of title to the plaintiff. Even though the period stated in the agreement of sale mentioned



S.A. Nos.1234 to 1236 of 2012

as 31.12.1993, it is only a tentative agreement, but not rigid and fixed one.

Since the defendant has not come forward to execute the regular sale deed as stated by him, a pre-litigation notice was issued on 25.01.1994 calling upon the defendant to complete the sale consideration before 31.01.1994. There was no frustration of contract and the sale agreement was still subsisting. As the defendant has been evading and demanding higher amount than what was agreed, the plaintiff was compelled to file the suit seeking for specific performance.

4.The defendant in his written statement has pleaded as follows:

a)At no point of time, the plaintiff was ready and willing to perform his part of contract by paying the balance sale consideration. But the defendant alone was ready and willing to perform his part of the contract. The plaintiff's representative Vijayaraghavan and his father S.Sohanraj and his office clerk by name T.Kannan at no point of time approached the defendant to complete the sale transaction. The allegation that the defendant agreed to handover the possession of the suit property on the date of the sale agreement is incorrect. The defendant has not handed over the original title deeds to the plaintiff. The defendant continues to be in



possession of the suit property. It is false to state that the time is not essence of the contract;

b)The allegation that the defendant had agreed to execute the regular Sale deed before pongal 1994 is false. It is false to state that as per the oral arrangement on 28.12.1993 and 12.01.1994, the plaintiff approached the defendant to complete the sale transaction with the balance sale consideration and that the defendant with an ulterior motive evaded and also demanded the higher amount than the agreed amount. Since the plaintiff has not completed the sale transaction within the stipulated time ie. on or before 31.12.1993, the defendant has intimated the plaintiff that the agreement dated 04.08.1993 has got frustrated and abandoned. Since the plaintiff could not perform his part of the contract within the stipulated time, he has not chosen to take any action against the plaintiff to enforce the contract;

c)The defendant has given reply notice to the plaintiff by explaining the fact that due to the non-performance of contract, the amount paid by the plaintiff as earnest money was appropriated by him towards the damages sustained by him, as the defendant has kept the properties without raising any crops due to the frustration of the sale agreement dated 04.08.1993.



S.A. Nos.1234 to 1236 of 2012

Since the plaintiff has tried to interfere with the defendant's peaceful possession and enjoyment of the suit property, the defendant has filed a suit in O.S. No.674 of 1994 on the file of the District Munsif Court, Kancheepuram restraining the plaintiff and his men from anyway interfering with the peaceful possession and enjoyment of the suit property. Hence, he prays for dismissal of the suit.

5.The short facts pleaded by the plaintiff in O.S. No.168 of 2007 in his plaint are as follows:

a)In view of the sale agreement between the plaintiff and the defendant, the agreement of sale has been executed on 04.08.1993 for a sale consideration of Rs.1,00,000/-. A sum of Rs.40,000/- has been paid to the defendant by the plaintiff as advance and time limit has been fixed as 30.12.1993. Though the plaintiff was ready and willing to get the sale deed executed before 31.12.1993, the defendant has evaded to complete the transaction. Despite the plaintiff made his request to complete the transaction through his representative by name Vijayaraghavan and his father S.G.Sohanraj and his Office Clerk by name T.Kannan, the defendant did not come forward to complete the sale transaction. Since the defendant



S.A. Nos.1234 to 1236 of 2012

was hospitalised on 27.12.1993 and 28.12.1993 in the MGR Hospital, Chennai, the plaintiff approached the defendant with the balance sale consideration, but the defendant has received only Rs.1,000/- alone from the plaintiff for his hospital expenses by stating that he will complete the sale transaction before pongal, after discharged from the hospital;

b)On the date of sale agreement itself, the defendant agreed to hand over possession of the suit property and hand over the document of title to the plaintiff. Even though the period stated in the agreement of sale mentioned as 31.12.1993, it is only a tentative agreement, but not rigid and fixed one. When the defendant was admitted in the hospital, he agreed to execute the regular sale deed before pongal 1994;

c)A pre-litigation notice was issued on 25.01.1994 calling upon the defendant to complete the sale consideration before 31.01.1994. There was no frustration of contract and the sale agreement was still subsisting. While so, the defendant has falsely filed a suit in O.S. No.674 of 1994 for permanent injunction and thereafter the same was closed as the defendant has not pressed;

d)When the plaintiff ploughed the suit property, the defendant came to dispossess the plaintiff, which necessitated the plaintiff to lodge a police



S.A. Nos.1234 to 1236 of 2012

complaint. As the defendant has been evading and demanding higher amount than what was agreed, the plaintiff has filed the suit for granting permanent injunction against the defendant restraining him from in anyway dispossessing the plaintiff from the suit property.

6.The defendant in his written statement has pleaded as follows:

a)At no point of time, the plaintiff was ready and willing to perform his part of the contract by paying the balance sale consideration. But the defendant alone was ready and willing to perform his part of the contract i.e. to execute and register the sale deed by receiving the balance sale consideration of Rs.60,000/- from the plaintiff as per the sale agreement within the stipulated time i.e. on or before 31.12.1993.;

b)The allegation that the defendant agreed to handover the possession of the suit property on the date of the sale agreement is not correct. The defendant has not handed over the original title deeds to the plaintiff. The defendant continues to be in possession of the suit property. Since the possession as well as the entire original documents of title with regard to the suit property is in possession of the defendant alone, the contention of the plaintiff is not acceptable;



S.A. Nos.1234 to 1236 of 2012

c)Due to frustration of the contract, the defendant has suffered damages to the tune of Rs.40,000/-. Since the plaintiff has tried to interfere with the defendant's peaceful possession and enjoyment of the suit property, the defendant has already filed a suit in O.S. No.674 of 1994 on the file of the District Munsif Court, Kancheepuram for permanent injunction restraining the plaintiff from interfering with the defendant's peaceful possession and enjoyment of the suit property and the said suit is pending. Hence, the defendant prays for dismissal of the suit.

7.The short facts pleaded by the plaintiff in O.S. No.169 of 2007 in his plaint are as follows:

a)The plaintiff is the absolute owner of the suit property and that the plaintiff and the defendant entered into a sale agreement on 04.08.1993 and that the sale price was fixed at Rs.1,00,000/- and a sum of Rs.40,000/- was received by the plaintiff as an earnest money. The time for completion of the sale transaction was fixed on or before 31.12.1993 in pursuant to the sale agreement dated 04.08.1993. The plaintiff never handed over possession to the defendant. The plaintiff was ready and willing to perform his part of contract to execute and register the sale deed by receiving the



balance sale consideration of Rs.60,000/- from the defendant as per the sale agreement within the stipulated time i.e. on or before 31.12.1993;

b) Though the plaintiff was ready and willing to perform his part of contract, the defendant never ready and willing to perform his part of contract by paying the balance sale consideration of Rs.60,000/-. Therefore, the contract has got frustrated and abandoned. In this regard, the plaintiff issued a notice dated 25.01.1994 to the defendant. In his reply dated 03.02.1994, the defendant has stated that possession of the suit property is with the plaintiff and the contract entered into between the plaintiff and the defendant was frustrated due to non performance of the contract by the defendant within the stipulated time. Under the guise of the sale agreement dated 04.08.1993, the defendant was trying to interfere with the plaintiff's peaceful possession and enjoyment of the suit property;

c) On 12.04.1993, the defendant tried to take forcible possession of the suit property with the help of his henchmen and the same was resisted by the plaintiff. Hence, the plaintiff has filed the suit for granting permanent injunction against the defendant restraining him from in anyway interfering with the plaintiff's peaceful possession and enjoyment of the suit property.



8.The defendant in his written statement has pleaded as follows:

a)When the defendant was ready and willing to take a regular sale deed before 31.12.1993 with the balance sale consideration, the plaintiff evaded to complete the sale transaction as agreed upon earlier. Though the defendant's father S.G.Sohanraj, the defendant's representative Vijayaraghavan and the defendant's office clerk T.Kannan approached the plaintiff and requested to complete the sale transaction, the plaintiff did not come forward to complete the sale transaction;

b)Since the plaintiff was hospitalised, the defendant approached him with the balance sale consideration. But the plaintiff received only Rs.1,000/- from the defendant for hospital expenses stating that he will complete the sale transaction before Pongal, after discharged from the hospital. Despite the same, the plaintiff has not come forward to execute his part of the contract;

c)The defendant need not trespass in the suit property as he was already in possession from 04.08.1993. In view of the subsequent conduct of the plaintiff, time mentioned in the agreement is waived to be the essence of contract. Pursuant to the Sale Agreement dated 04.08.1993



S.A. Nos.1234 to 1236 of 2012

entered into between the plaintiff and the defendant for Rs.1,00,000/- with an advance amount of Rs.40,000/-, the defendant was in possession and enjoyment of the suit property. Therefore, the suit is liable to be dismissed.

9. Based on the above pleadings, the following issues were framed by the Trial Court:

'1. Whether it is true that the plaintiff and the defendant entered into a sale agreement on 04.08.1993?

2. Whether the time for performance is wrongly written as 30.12.1993 instead of 31.12.1993?

3. Whether the plaintiff was willing to perform his part of contract prior to 31.12.1993?

4. Whether it is true that the defendant accepted Rs.1,000/- from the plaintiff towards medical expenses?

5. Whether it is true that the defendant agreed to execute sale deed prior to Pongal in the year 1994?

6. Whether the defendant delayed the execution of sale agreement dated 04.08.1993 by demanding higher amount?

7. Whether there was no sale agreement dated 04.08.1993 as stated by the defendant?

8. To what relief the plaintiff is entitled to?

10. On the side of the appellant, 2 witnesses were examined as PW1 and PW2 and Exhibits A1 to A3 were marked. On the side of the deceased

Page 13 of 31



S.A. Nos.1234 to 1236 of 2012

first respondent, 2 witnesses were examined as DW1 and DW2 and Exhibits B1 was marked. At the conclusion of the trial and on considering the evidence available on record, the Trial Court has partly decreed the suit O.S. No.199 of 1995 and granted the alternative relief of refund of the advance amount and has dismissed the suit in other aspects. O.S. No.168 of 2007 was dismissed and O.S. No.169 of 2007 was decreed and the relief of permanent injunction was granted by the Trial Court. Aggrieved party in all the three suits has preferred three Appeal Suits in A.S. Nos.9 to 11 of 2011, which were also dismissed. However, the First Appellate Court, in A.S. No.9 of 2011, has slightly modified the decree by granting 9% interest on the refund of the advance amount. Aggrieved over the same, the appellants have preferred these second appeals.

11.It is relevant to note that during the pendency of these Second Appeals, the defendant in O.S. Nos.199 of 1995 and 168 of 2007 and the plaintiff in O.S. No.169 of 2007 died and his legal heir was brought on record.



S.A. Nos.1234 to 1236 of 2012

12. On hearing the submission of the learned counsel for the appellant, these Second Appeals have been admitted on the following substantial questions of law:

“a. Are the courts below justified in dismissing the suit on the ground that the appellant had not deposited the balance sale consideration into Court overlooking the fact that there was no direction by the courts to that effect as provided under explanation I to Sec.16 of the Specific Relief Act?

b. Are the courts below justified in disregarding the evidence of P.W.2 (the brother-in-law of the respondent) on a presumption that the respondent and P.W.2 are not in good terms and his evidence cannot be believed?

c. Are the courts below justified in coming to the conclusion that the appellant is not in possession of the property overlooking the recitals in Ex.A1 agreement which categorically states that the respondent had delivered possession of the property to the appellant?”

13. Learned counsel appearing for the appellant submitted that the sale agreement itself has been proved by the appellant by examining the



S.A. Nos.1234 to 1236 of 2012

appellant's representative, by name Vijayaraghavan as one of the witnesses/

PW2, but the Trial Court has misled itself and made an observation that the appellant has not examined appellant's representative, by name Vijayaraghavan to prove that the sale agreement is true and to prove readiness and willingness. It is sufficient for the appellant to establish that he has sufficient means to pay the sale consideration and the appellant is not expected to deposit the balance sale consideration into the Court unless there is a specific order is passed by the Court in this regard. During his cross examination, the deceased first respondent has admitted about the execution of the sale agreement and the fact of receiving the advance amount and also the valuables of the appellant that he is a man of means. The appellant has been all along ready and willing to perform his part of the contract as he got the means and he had also proved his willingness by frequently contacting the deceased first respondent by himself and through his representative and thereafter by sending a legal notice. But, the Trial Court and the First Appellate Court, without considering the above aspects, had chosen not to grant the relief of specific performance.



S.A. Nos.1234 to 1236 of 2012

14.Learned counsel for the appellant further submitted that in the sale agreement itself, there are recitals to the effect that possession along with title deeds has been handed over to the appellant. Since the sale agreement has been admitted, it would amount to admitting the recitals in the sale agreement and the same speaks about the handing over of title deeds and possession to the appellant, but the courts below have not appreciated the above evidence properly. Learned counsel for the appellant cited a decision of the Hon'ble Supreme Court reported in **(2023) 11 SCC 775 in the case of U.N.Krishnamurthy vs. A.M.Krishnamurthy** in support of the contention of the appellant that the appellant has proved his readiness and willingness. It is relevant to refer paragraph No.33, which reads as follows:

'33.There is a distinction between readiness and willingness to perform the contract and both ingredients are necessary for the relief of specific performance. In Acharya Swami Ganesh Dassji v. Sita Raj Thapar cited by Mr.Venugopal, this court said that there was a difference between readiness and willingness to perform a contract. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff. The same view was taken by this Court in Kalawati v. Rakesh Kumar.'



S.A. Nos.1234 to 1236 of 2012

WEB COPY

15.Learned counsel for the deceased first respondent submitted that PW1/appellant has admitted in his evidence that he has given a police complaint to restrain the deceased first respondent from harvesting the standing crops and to cut the fencing trees. This would only show that contrary to the recitals in the sale agreement, actual possession was lying with the first respondent only. The suit itself has been filed after two years from the date of expiry of the sale agreement and the conduct of the appellant would show that he was not ready and willing to perform his part of the contract. The appellant did not examine the alleged representative and the Clerk to whom he was sending messages and money to be tendered to the first respondent. PW2/first respondent's brother in law has stated in his evidence that by concluding his contract, he will make arrangement for the treatment meted out to the first respondent's wife. Even though PW2 is the first respondent's relative, he did not stand in good terms and he has been examined on the side of the appellant. To prove the readiness, the appellant could have produced the bank statement or other evidence to show the same. In the evidence of the deceased first respondent, he only



denied the fact that the appellant has got sufficient means to pay the sale consideration.

Discussion:

16.The fact that there was a sale agreement entered into between the appellant and the deceased first respondent on 04.08.1993 in respect of the suit property is not denied. The contention of the appellant is that he was all along ready and willing to perform his part of the contract and the first respondent was not ready to perform his part of contract.

17.Learned counsel for the appellant submitted that depositing the balance sale consideration into the court cannot be done unless there is a direction of the Court and that cannot be the reason for denying the relief to the appellant. The appellant has been all along submitted before the Court and has also pleaded in his plaint that he has sent his representative Vijayaraghavan to the deceased first respondent in order to convince him to get ready for the sale deed to be executed. He has also stated that he has sent his clerk by name Kannan to complete the sale transaction by receiving the balance sale consideration and valuables. The appellant has further



S.A. Nos.1234 to 1236 of 2012

stated that in yet another occasion, the appellant's father Sohanraj also approached the deceased first respondent. Despite the same, the appellant had chosen to examine himself and the brother in law of the deceased first respondent alone as witnesses.

18.A party who has pleaded that he was ready and willing to perform his part of the contract, is expected to prove the same. Though the appellant has made positive assertion with specific details that he had sent certain named persons to represent on his behalf to negotiate with the first respondent to execute the sale deed, he did not opt to examine any of those witnesses.

19.It is submitted by the learned counsel for the deceased first respondent that the deceased first respondent himself has admitted in his evidence about the financial wherewithals of the appellant. The holistic reading of the evidence of DW1 would only show that he has admitted the fact that the appellant has been running several businesses. But he had denied that the appellant has got means to perform the terms of contract. The appellant has only examined the private witnesses and has not



examined the persons, who were sent by him to represent himself to the first respondent and he had also not produced any bank statement or any other documents to support that he had the financial capability to fulfill the terms of contract, during the relevant point of time.

20. Even though it is correct to state that the appellant is not expected to deposit the balance sale consideration into the court without a direction, that alone cannot save the appellant who did not mind to perform his part of the contract as agreed between the parties in the sale agreement Ex.A1. Though the courts below had dismissed the suit only on the ground that the appellant did not deposit the balance sale consideration into the court, the courts below had made an exhaustive analysis of the evidence available and arrived at a conclusion that the appellant has proved his readiness and willingness. The appellant has tried to examine PW2, who is the brother in law of the deceased first respondent, who has stated in his evidence that he was negotiating between the appellant and the first respondent to get the sale fructified and to use the sale proceedings for the treatment of his sister.



S.A. Nos.1234 to 1236 of 2012

21.The deceased first respondent's contention is that PW2 is not in good terms with him and that has been proved in the cross examination of PW2 himself. During the cross examination of PW2, he has stated that he did not attend the funeral of his sister, which only shows that he had been in inimical terms with the first respondent and therefore, the appellant tried to take advantage of the position and examine him as a witness.

22.As stated already, the appellant himself has made positive assertion as to his efforts to get the sale deed executed by sending his own representative and the staff, but he has not chosen to examine any of those persons as his witnesses. It is proved before the court that PW2 is not in cordial terms with the first respondent and hence, it is right for the trial court to hold that his evidence cannot be believed.

23.Sofar as the substantial question No.1 is concerned, the legal position is correct, but the above legal position would not come to the rescue of the appellant because the courts below did not opt to deny the relief of specific performance to the appellant on the ground of failure to



S.A. Nos.1234 to 1236 of 2012

deposit the balance sale consideration into the court. Hence, the substantial questions of law 1 and 2 are answered against the appellant.

24.Sofar as the possession is concerned, no doubt, there are recitals in the sale agreement that the deceased first respondent had handed over the original title deeds as well as his possession on the date of the sale agreement itself.

25.The above judgment in paragraph No.33, there cannot be any quarrel on the above legal position. But the above decision has to be applied to the facts available in each and every case.

26.Sofar as the appellant's case is concerned, the materials available on record does not prove the readiness or willingness of the appellant to perform his part of the contract and he did not adduce evidence satisfactorily to the court to prove that he stand in a better equitable position to get the relief of specific performance than the relief of refund of advance amount.



S.A. Nos.1234 to 1236 of 2012

WEB COPY

27. When the terms of contract has been reduced into writing, the parties to those terms can prove it only by producing the written instrument itself as evidence. As per Section 91 of the Evidence Act, no doubt, the appellant had produced the sale agreement to show that there is a term in the contract with regard to the handing over of title deeds on the date of the sale agreement itself. If the deceased first respondent pleads otherwise, then it is for him to disprove the above terms by letting any contrary evidence.

28. It was the categorical contention of the first respondent that there was a recital in the sale agreement to the effect that actual possession has to be delivered to the appellant. Neither the possession nor the title deeds had been handed over to the appellant. PW1/appellant in his cross examination has admitted that the deceased first respondent has been in possession of the suit property. In fact, the appellant has given a police complaint to restrain the first respondent from harvesting the standing crops and to cut the fencing trees. This action taken by the appellant would only show that the deceased first respondent continued to be in possession of the suit property and he has not handed over the possession in favour of the



S.A. Nos.1234 to 1236 of 2012

appellant. In fact, the deceased first respondent has stated that because of such action of giving police complaint by the appellant, the first respondent had sustained loss and for which he is entitled to retain the advance money given to him. But the courts below were convinced with the appellant's submission that the deceased first respondent did not prove the damages and therefore, granted the decree of refund of the advance amount and the Appellate Court had given the relief of granting 9% interest on the same.

29. When the appellant's own documents proved that the possession was retained by the first respondent only, it is right for the courts below not to grant the relief of permanent injunction in favour of the appellant. The appellant did not prove his actual possession over the suit property. Therefore, the appellant cannot expect the relief of permanent injunction to be granted in his favour. Even though there were recitals in Ex.A1 to the effect that the possession was being handed over to the appellant, in reality the same did not occur. The courts below had appreciated the evidence in a holistic fashion and had chosen to grant a part relief to the appellant with regard to the advance amount even if the appellant cannot prove his readiness and willingness before the Court.



S.A. Nos.1234 to 1236 of 2012

WEB COPY

30.In the instant case, the appellant has proved the readiness and willingness to execute the terms of contract and hence, the Trial Court cannot be found fault in granting the relief of specific performance or granting the relief of permanent injunction as prayed for by the first respondent. Hence, the third substantial question of law is also answered against the appellant.

31.In the result, all the three Second Appeals are dismissed by confirming the judgment and decree dated 17.11.2011 made in A.S. Nos.9



S.A. Nos.1234 to 1236 of 2012
DR.R.N.MANJULA ,J.

WEB COPY

vga

to 11 of 2011 on the file of District Judge, District Court No.II,
Kanchipuram. No costs.

03.11.2025

Index: Yes / No
Speaking order / Non-speaking order
vga

To

1.The District Judge, District Court No.II,
Kanchipuram

2.The Sub Court, Kanchipuram

S.A. Nos.1234 to 1236 of 2012



S.A. Nos.1234 to 1236 of 2012

S.A. Nos. 1234 to 1236 of 2012

Dr.R.N.MANJULA,J.

WEB COPY

This Second Appeal is listed today under the caption "for being mentioned" at the instance of the appellant.

2.The learned counsel for the appellant has pointed out some errors / corrections in Paragraph Nos.5 (c), 20 and 30 of the judgment dated 03.11.2025 passed in the Second Appeal.

3.In view of the above submission made by the learned counsel for the appellant, the said corrections are carried out now and the following orders are passed:

“(i) In **Paragraph No.5 (c)**, the phrase ‘and thereafter the same was closed as the defendant has not pressed;’ shall be deleted.

(ii) In so far as **Paragraph** Nos.20 and 30 are concerned, the said paragraphs shall be replaced as under:

“**20.**Even though it is correct to state that the appellant is not expected to deposit the balance sale consideration



into the court without a direction, that alone cannot save the appellant who did not mind to perform his part of the contract as agreed between the parties in the sale agreement Ex.A1. Though the courts below had dismissed the suit not only on the ground that the appellant did not deposit the balance sale consideration into the court, the courts below had made an exhaustive analysis of the evidence available and arrived at a conclusion that the appellant has not proved his readiness and willingness. The appellant has tried to examine PW2, who is the brother in law of the deceased first respondent, who has stated in his evidence that he was negotiating between the appellant and the first respondent to get the sale fructified and to use the sale proceedings for the treatment of his sister.

30.In the instant case, the appellant has not proved the readiness and willingness to execute the terms of contract and hence, the Trial Court cannot be found fault in not granting the relief of specific performance or not granting



S.A. Nos.1234 to 1236 of 2012

the relief of permanent injunction as prayed for by the first respondent. Hence, the third substantial question of law is also answered against the appellant.”

4.It is made clear that, except the above corrections, in all other respects, the judgment dated 03.11.2025 shall remain unaltered.

5.The Registry is directed to issue the corrected copy of the judgment to the parties.

12-02-2026

gsa



WEB COPY



S.A. Nos.1234 to 1236 of 2012

DR.R.N.MANJULA, J.

gsa

S.A. Nos. 1234 to 1236 of 2012

12.02.2026