



A.S.No.536 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 15.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.536 of 2022
& C.M.P.No.20014 of 2022

S.Manimekalai (Died)

1.S.Sankar,
S/o.Late. Sivagnanam

2. S.Baggiyaraj
S/o.Late. Sivagnanam

3. S.Kalpana
D/o.Late. Sivagnanam
1 to 3 are residing at
Pavakkal Village,
Uthankarai Taluk,
Krishnagiri District.

4. V.Parthiban
S/o.Late. Venugopal,

5.V.Baskaran
S/o.Late.Venugopal,



A.S.No.536 of 2022

6.V.Suresh

S/o.Late. Venugopal,

4 to 6 are residing at

Samalpatti Village, Uthankarai Taluk,

Krishnagiri District.

...Appellants/Defendants.

/versus/

A.Mohan @ Mohanraj

S/o.K.Appavu Udaiyar,

D.No.114, Polur Road,

Chengam Town.

... Plaintiff/Respondent

Appeal Suit has been filed under Section 96 of the Civil Procedure Code, pleaded to set aside the judgment and decree dated 05.01.2022 of the Additional District Court, Tiruvannamalai made in O.S.No.27 of 2011.

For Appellant : Ms.G.Sumitra

For Respondents : Mr.S.Mukunth, Senior Counsel,
for Mr.K.Venkatasubban,
for M/s.Sarvabhauman Associates

J U D G M E N T

The suit for specific performance was decreed by the trial Court in favour of the plaintiff

2. Being aggrieved by the decree, the defendants have filed the present appeal before this Court.



A.S.No.536 of 2022

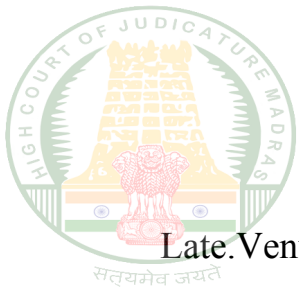
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3. The short point involved in this matter is that:

(i) Whether the plaintiff was ready and willing to perform his part of contract and ;

(ii) Whether the defendants had absolute right in the property to enter into sale agreement with the plaintiff.

4. The trial Court, after perusing the evidence has held both the issues in favour of the plaintiff. However, in the appeal preferred by the defendants, it is contended that the suit agreement dated 09.02.2011 has specifically fixed time for performance as six months. Though, the plaintiff pleaded that he was ready with the balance sale consideration of Rs.19,36,100/- on 22.07.2011 at Chengam, it is admitted that only the defendants 5 to 7 turned up and others did not turn up. As a result, the plaintiff has not tendered the balance sale consideration. However, the said fact not been proved by the plaintiff and in fact, the legal notice calling upon the defendants to come and execute the sale deed itself was issued only after the lapse of six month period. Furthermore, the trial Court had failed to take note of the fact that apart from the defendants, there are other female heirs of



A.S.No.536 of 2022

Late.Venugopal Chettiar, who were not parties to the sale agreement and therefore, on this ground also, the suit for specific performance ought not to have been decreed.

5. The Learned Counsel appearing for the respondent contended that Ex.A1 the sale agreement, was executed by the defendants 1 to 7, wherein they promised to sell the property for sale consideration of Rs.22,36,100/- and received a part payment of Rs.3,00,000/- on the date of executing the sale agreement. Within stipulated period of six months, the defendants were called upon to execute the sale deed after receiving the balance sale consideration but few of the them did not turned up and defendants 5 to 7 were present demanded Rs.11,00,000/- on that day and promise to bring the other vendors within a period of two months. Since the plaintiff want to complete the contract by paying the entire sale consideration to all the vendors at one time, he accepted the request of the defendants 5 to 7 and waited for other two months. Therefore, his readiness and willingness were always be expressly proved. Furthermore, he would also state that soon after the decree dated 05.01.2022, the balance sale consideration was deposited on 07.01.2022 which would also establish his readiness and willingness in performing the



6. The evidence of P.W.1 and P.W.2 along with documents marked as Ex.P.1 to Ex.P.16 indicates that the defendants 1 to 7 had inherited the property from Late.Venugopal Chettiar, plotted out into housing site and being selling it to various third parties, including the family members of the plaintiff. The property has been sold by the defendants 1 to 7 and the wife of Venugopal Chettiar and daughter of Venugopal Chettiar had not taken any claim in those portion of property. In fact, even after the suit agreement dated 09.02.2011, which is marked as Ex.A1, the defendants 1 to 7 themselves alienated the portion of the property inherited by them through Venugopal Chettiar to one Raja (Ex.A15, dated 08.09.2011) and to one Mr.Arumugam (Ex.A.16). Therefore, the trial Court has rejected the plea of non-joinder of necessary parties. After alienating most of the plots, the defendants 1 to 7 had come forward to take a plea that there are co-owners to the property only in respect of Ex.A1 alone. Till date, there is no indication that the widow and daughter of Late.Venugopal Chettiar had sought any right in the property. Even if it is so, when pre-suit notice (Ex.A2) was caused, the defendants ought to have disclosed the fact and should have returned the advance



A.S.No.536 of 2022

amount received.

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7. This Court finds from the records is that, on receipt of the pre-suit notice (Ex.A2), the defendants 5 to 7 alone has replied under Ex.A10, wherein they have doubted the readiness and willingness of the plaintiff and also projected a new fact contrary to their own agreement by introducing co-sharers to the property.

8. This Court, on perusing the records and evidence, finds that the property left by Venugopal Chettiar has been dealt by the defendants 1 to 7 and alienated most of the property. There is no other rival claim for those properties. Even with respect to the subject property, no rival claim made by the female heirs of Venugopal Chettiar. Therefore, the defence taken by the defendants that the suit agreement is not capable of being performed for non-joinder of necessary party is baseless.

9. As far as readiness and willingness is concerned, it is trite law that the buyer need not jungle the coins before the vendor at all times. However, there



A.S.No.536 of 2022

must be material evidence to show that the purchaser was always ready and willing to perform the contract. In the instant case, the agreement is dated 09.02.2011 with six months' time to perform. The said period expired on 09.08.2011.

10. In *Man Kaur (dead) by LRs. vs. Hartar Singh Sangha* reported in (2010) 10 SCC 512, it is held that:

"17. *To succeed in a suit for specific performance, the plaintiff has to prove: (a) that a valid agreement of sale was entered into by the defendant in his favour and the terms thereof; (b) that the defendant committed breach of the contract; and (c) that he was always ready and willing to perform his part of the obligations in terms of the contract. If a plaintiff has to prove that he was always ready and willing to perform his part of the contract, that is, to perform his obligations in terms of the contract, necessarily he should step into the witness box and give evidence that he has all along been ready and willing to perform his part of the contract and subject himself to cross-examination on that issue. A plaintiff cannot obviously examine in his place, his attorney-holder who did not have personal knowledge either of the transaction or of his readiness and willingness. Readiness and willingness refer to the state of mind and conduct of the purchaser, as also his capacity and preparedness on the other. One without the other is not sufficient. Therefore a third party who has no personal knowledge cannot give evidence about such readiness and*



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A.S.No.536 of 2022

willingness, even if he is an attorney-holder of the person concerned."

11. The case of the plaintiff is that even on 22.07.2011, he was ready with the cash, but all the defendants did not turn up. It is word against word and even if this is not held to be proved, the moment he filed the suit after pre-suit notice and receipt of the reply his intention to get the sale agreement executed is palpably made clear and the payment of the balance sale consideration soon after the decree proves his readiness and willingness. Hence, the same cannot be doubted merely because the plaintiff had not sought for the Court permission to deposit the balance sale consideration during the pendency of the suit.

12. This Court, at the same time, take note of the fact that, being an immovable property which has propensity of price escalation every quarterly, the plaintiff cannot be enriched by holding the sale consideration for 10 years. The defendants are entitled for an equitable compensation for the delayed payment, even though the delay is contributable to their own conduct. Hence, the respondent/plaintiff herein is directed to pay a further sum of Rs.8,00,000/- which will be around 4% of the balance sale consideration paid 10 years after the date of



A.S.No.536 of 2022

agreement. The said money shall be paid within a period of 30 days. On such payment, the defendants/appellants shall come forward to execute the sale deed in favour of the respondent/plaintiff. Failing which, the trial Court should execute the sale deed in favour of the respondent/plaintiff.

13. Accordingly, this *Appeal Suit is partly allowed*. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

15.07.2025

Index :Yes/No.
Neutral citation :Yes/No.
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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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A.S.No.536 of 2022

Dr.G.JAYACHANDRAN,J.

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Appeal Suit No.536 of 2022

15.07.2025