



A.S.No.520 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 30.06.2025

CORAM:

The HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No.520 of 2024
and
C.M.P. Nos.17834 and 17837 of 2024

K. Ramachandran (Died)

1. Latha
2. Shanthi
3. Kathiravan

... Appellants

Versus

M. Rajendran

... Respondent

Appeal Suit is filed under Section 96 and Order XLI, Rule 1 and 2 of Civil Procedure Code against the judgment and decree dated 21.12.2023 made in O.S.No.87 of 2020 on the file of the I Additional District Court at Namakkal (Previously O.S.No.485 of 2014, District Munsif Court at Namakkal).

For Appellants	:	Mr. T.L.Thirumalaisamy
For Respondent	:	Mr. N. Manokaran

JUDGMENT

This Appeal Suit had been filed against the judgment and decree dated 21.12.2023 made in O.S.No.87 of 2020 on the file of the I Additional District Court at Namakkal (Previously O.S.No.485 of 2014, District Munsif Court at



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Namakkal).

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2. The learned Counsel for the Appellants Thiru.T.L.Thirumalaiswamy submitted his argument. It is the submission of the learned Counsel for the Appellants that the Appellants herein are the Plaintiffs in O.S.No. 485 of 2014, a Suit filed by the Plaintiffs seeking specific performance of contract for sale pending before the learned Principal District Munsif, Namakkal. Since the Defendant had filed Transfer Civil Miscellaneous Petition before the learned Principal District Judge seeking withdrawal of the suit in O.S. No.485 of 2014 pending on the file of the learned Principal District Munsif, Namakkal to be tried along with a suit for partition filed by the son and daughters of the Defendant against the Defendants in O.S.No.485 of 2014 before the learned Additional District Judge in O.S. No.247 of 2019. Therefore, the Defendant in O.S. No. 485 of 2014 sought for transfer of the suit in O.S.No. 485 of 2014 to be tried along with O.S.No. 247 of 2019. Therefore, the suit in O.S.No. 485 of 2014, a suit for specific performance was withdrawn from the Court of the learned Principal District Munsif, Namakkal and transferred to the file of the learned I Additional District Judge, Namakkal and re-numbered as O.S.No. 87 of 2020. Since the suit property involved in O.S. No. 485 of 2014 was also the suit property in O.S. No. 247 of 2019 both the suits were tried together and a common



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judgment was pronounced by the judgment dated 21.12.2023. The suit in O.S.No. 485 of 2014 which was re-numbered as O.S.No. 87 of 2020 on the file of the learned I Additional District Judge, Namakkal was dismissed. Therefore, aggrieved by the judgment of dismissal, the Plaintiff in O.S.No. 485 of 2014 re-numbered as O.S.No. 87 of 2020 had preferred this First Appeal.

3. Originally the suit in O.S.No. 485 of 2014 was filed by Ramachandran against Rajendran for the relief of specific performance of contract for sale. Pending trial, the Plaintiff Ramachandran died. Therefore his legal heirs - two daughters and son were impleaded as Plaintiffs 2 to 4 in O.S. No. 87 of 2020 against Rajendran the Defendant. The learned Counsel for the Appellants had invited the attention of the Court to the averments in the plaint and the contents of the written statement filed by the Defendant. The Plaintiff had sought specific performance of contract for sale on the ground that on the date of execution of the sale agreement deed dated 13.05.1991 the Defendant offered to sell the properties in Survey No. 52/3 of Chinna Muthalaipatti Village measuring an extent of 1 acre 84 cents along with half share in the common well and property in Survey No.51/1 measuring an extent of 42 cents along with half share in the irrigation pond and connected easement right. As per the sale agreement deed dated 13.05.1991 the sale price was fixed at Rs.57,500/-. On the date of sale agreement, 13.05.1991 Rs.50,000/-



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was paid to the Defendant. The balance of sale consideration of Rs.7,500/- is to be paid within a year on the ground that the Defendant claimed that property was purchased in the year 1989 from one Chellammal along with her daughters and son – Dhanalakshmi, Kamalam, Periyasamy. The Defendant had purchased the property on 23.09.1989 from Chellammal and her daughters and son. The original sale deed dated 23.09.1989 was also handed over to the Plaintiff on 13.05.1993. The time of one year was sought for payment of balance of sale consideration on the understanding that the Defendant will get the endorsement for sale of the property from some more legal heirs of the seller in the 1989 sale deed Chellammal who are residing in Sri Lanka particularly her legal heirs – Palanisamy, Jayalakshmi, Parameshwari and Ramasamy @ Ramaiah. When they come to India, they will execute the sale deed. Therefore, one year time was granted on 13.05.1991 when the sale agreement was executed which was registered with the office of the Sub Registrar, Namakkal as Document No.746 of 1991. As per the extended period, the legal heirs of Chellammal by name Palanisamy, Jeyalakshmi, Parameshwari, Ramasamy @ Ramaiah did not come and execute the sale deed, the Plaintiff had executed a Document seeking extension of time dated 16.09.1992 with the Defendant thereby the specific recitals was mentioned in the document seeking extension of time to execute sale deed from Palanisamy, Jeyalakshmi, Parameshwari, Ramasamy @ Ramaiah. Even after the execution of the extension period, the Defendant did



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not come forward to execute the sale deed. Therefore, the Plaintiff had issued notice calling upon the Defendant to come and execute the sale deed. Even after receipt of the notice, the Defendant did not come forward to execute the sale deed. The Defendant had issued notice on 13.10.2014 with false averments as though he had obtained a loan from the Plaintiff for which he had executed a sale agreement deed as a security for the loan and had also handed over the title deed obtained from Chellammal in the year 1981 to the Plaintiff. On receipt of such notice, the Plaintiff had issued proper reply in the reply notice dated 21.10.2014 thereby seeking apology from the Defendant and also directing the Defendant to come and execute the sale deed. Since he had not executed the sale deed, the suit had been filed seeking the relief of specific performance of contract for sale. The suit was originally filed before the learned Principal District Munsif which was numbered as O.S.No.485 of 2014. On receipt of summons, the Defendant entered appearance and filed written statement disputing the claim of the Plaintiff reiterating the contents of the notice sent by the Defendant dated 13.10.2014.

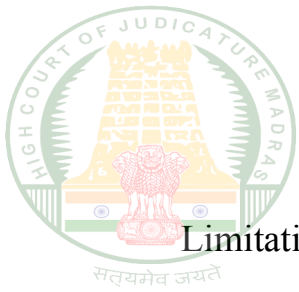
4. As per the contents in the written statement, the Defendant was in the business of old scrap and old newspapers. He is an illiterate. The Defendant was acquainted with the Plaintiff over a period of time as the Plaintiff used to sell the old newspapers to the Defendant. Therefore, when the



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Defendant was in dire need of money for his business, he sought a loan of Rs.20,000/- from the Plaintiff. The Plaintiff agreed to extend loan on condition that the Defendant had to execute a sale agreement deed along with the original sale deed of the property. Therefore, the Defendant had executed sale agreement deed dated 13.05.1991. The Defendant in the written statement claimed that the property purchased by him in the year 1989 was for Rs.89,000/- whereas the sale agreement deed executed was for Rs.57,500/- and the Plaintiff was serving as a Police Constable and in the due course of time, he was promoted as Sub Inspector of Police and when the Defendant wanted to repay the loan amount with interest, the Plaintiff refused to receive the loan with interest. Instead, threatened the Defendant to execute the sale deed for the property for which the sale agreement was executed on 13.05.1991. In the written statement, the Defendant also claimed that the Plaintiff threatened the Defendant using Police powers through his subordinates. On verification by the Defendant, the Defendant came to know about the sale agreement deed being registered and had created encumbrances in the suit property. Therefore, he had caused legal notice dated 13.10.2014 seeking return of the sale deed handed over to the Plaintiff by the Defendant after receipt of the amount borrowed by him. Also the Defendant had questioned the filing of the suit for specific performance which is belated as per the sale agreement deed dated 13.05.1991 and claiming that the suit itself is not maintainable as it is hit by



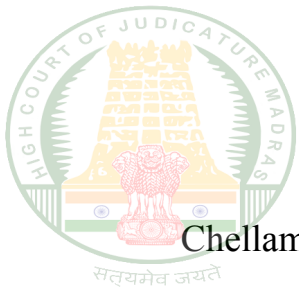
Limitation Act.

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5. Based on the pleadings in the plaint and written statement, the learned I Additional District Judge had raised the following issues:

- (i) Whether the Plaintiff is entitled to relief of specific performance of contract for sale?
- (ii) Who is entitled to cost whether the Plaintiff or Defendant?

6. During the pendency of the suit, since the Plaintiff died, the legal heirs of the Plaintiff were impleaded as Plaintiffs 2 to 4. The fourth Plaintiff Kathiravan is the son of the original Plaintiff, who examined himself as P.W-1. He had filed an affidavit as examination in chief of P.W-1. The averments in the plaint was stated in the affidavit as examination in chief of P.W-1. P.W-1 was cross-examined by the learned Counsel for the Defendant. During the examination of the Plaintiff, the documents in support of the claim of the Plaintiff were marked as Ex.A-1 to Ex.A-5. Ex.A-1 is the registered sale agreement deed dated 13.05.1991. Ex.A-2 is the document executed between the Plaintiff and Defendant regarding extension of time. Ex.A-3 is the notice sent by the Defendant to the Plaintiff dated 13.10.2014. Ex.A-4 is the reply notice by the Plaintiff to the notice sent by the Defendant dated 21.10.2014. Ex.A-5 is the original sale deed executed in favour of the Defendant from one



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Chellammal. The attessor to the document Khaleel was examined as P.W-2.

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The wife of the Defendant, Sheela was examined as D.W-1. The notice sent by the Defendant dated 13.10.2014 was marked as Ex.B-1. The reply notice sent on behalf of the Plaintiff dated 21.10.2014 was marked as Ex.B-2. No other witness was examined on the side of the Defendant. P.W-2 was also cross-examined by the learned Counsel for the Defendant. The wife of the Defendant Sheela had filed affidavit as examination in chief of D.W-1. The contents of the written statement filed by the Defendant was stated in the affidavit filed as examination in chief of D.W-1. In the cross-examination the wife of the Defendant had stated that the Defendant had not been in good health, therefore, unable to attend the Court and so she had volunteered to depose evidence on behalf of the Defendant. In the cross-examination D.W-1 admitted that she was aware of the transactions. It is her contention that the property which is valued for Rs.89,000/- in the year 1989 was sought to be sold with the pressures exerted by the original Plaintiff for a value of Rs.57,500/-. Therefore, the sale agreement was not a genuine sale agreement, but only a security. Only at the instance of the original Plaintiff, the original sale deed dated 23.09.1989 was handed over to the original Plaintiff. As per Section 120 of the Indian Evidence Act, the husband or wife of the party to a civil dispute can depose on behalf of the husband or wife. They are competent witnesses. Therefore, the examination of wife of the Defendant as D.W-1 is permitted in



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law. The learned Counsel for the Appellants invited the attention of this Court that the fourth Plaintiff who was examined as P.W-1 had reiterated the plaint averments. In the cross-examination, he was unable to state clearly the names of the attesting witnesses. But he had clearly stated that the scribe of the document did not make the case weak. He had deposed evidence entering the shoes of his father. The defence of the Defendant that the sale agreement was not intended for execution of sale deed was denied by P.W-1 in the cross-examination. The Plaintiff was able to prove the sale agreement deed by examining the witness to the sale agreement Khaleel as P.W-2. P.W-2 had withstood the cross-examination and denied the suggestion of the learned Counsel for the Defendant that the sale agreement deed was not intended for sale of the properties.

7. The learned I Additional District Judge had on assessment of evidence dismissed the suit which is perverse. It is to be noted that the Plaintiff had parted with the entire amount of Rs.57,500/-. Therefore, the claim that the Plaintiff is not willing to perform his part of the contract does not arise. The claim of the Defendant that the suit is barred by limitation also would not attract to the facts and circumstances of this case as the cause of action for filing the suit is continuous as the Defendant had not brought the legal heirs of Chellammal from Sri Lanka to execute the sale deed. Therefore, the suit was



within time. Ex.A-2 did not mention the period it had only extended the period stating that the left out legal heirs are to be produced to execute the sale deed.

The learned Counsel for the Appellants invited the attention of this Court that Ex.A-2 did not mention any prescribed time limit. The principle “Plaintiff is ready and willing to perform his part of contract” is not applicable to the facts of this case as the Plaintiff had paid the entire amount as per the sale agreement deed.

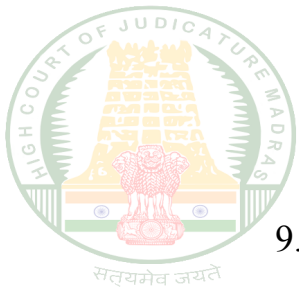
8. The learned Counsel for the Appellants invited the attention of this Court under Section 22 (3) of the Specific Relief Act which is extracted as under:

“22. Power to grant relief for possession, partition, refund of earnest money, etc.—

(1)Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—**(a)**possession, or partition and separate possession, of the property, in addition to such performance; or**(b)**any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2)No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3)The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.”



9. Also, the learned Counsel for the Appellants submitted that only to defeat the suit for specific performance of contract for sale in O.S.No.485 of 2014 the son and daughters of the Defendant Rajendran had filed suit against Rajendran in O.S.No.247 of 2017 seeking partition by impleading the Plaintiff in O.S.No.485 of 2014 as Defendants 2 to 5. It is a vexatious suit. Only to defeat the specific performance of contract for sale. Therefore, the suit in O.S.No.247 of 2019 was dismissed by the learned I Additional District Judge, Namakkal.

10. The Defendant did not enter the witness box. The wife of the Defendant only volunteered as a witness on the ground that the Defendant was not in good health. It is only to evade from inconvenient questions put to him that he had avoided the witness box. Instead, the wife of the Defendant was examined as D.W-1. The Court has to draw adverse inference against the conduct of the Defendant.

11. The learned Counsel for the Appellant invited the attention of this Court to the cross examination of D.W-1. Wherein she admitted that he is given to alcoholic drinks and he may falter during his deposition. When she was confronted regarding whether the Defendant is mentally healthy, she had stated that he is mentally healthy.



WEB COPY 12. In support of his contention, the learned Counsel for the Appellants relied on the reported ruling of the Hon'ble Supreme Court in **(2005) 12 SCC 764** in the case of ***S.Brahmanand and others vs. K.R.Muthugopal (Dead) and others*** wherein the Hon'ble Supreme Court had observed as follows:

“10. The trial court held in favour of the Plaintiffs on all issues. According to the trial court, the suit was for specific performance of an agreement in respect of which no date had been fixed and, therefore, the cause of action would arise only when the Plaintiffs had notice that the performance had been refused. The trial court was of the opinion that the second part of [Article 54](#) of the [Limitation Act, 1963](#) was applicable and since the Plaintiffs notice of the refusal of performance by the Defendants 1 and 2 arose only on 31.8.95/ 1.9.1995, the suit filed on 15.9.1995 was within limitation. On this finding, the learned judge of the trial court decreed the suit as prayed for, since the learned judge was satisfied that the Plaintiffs were willing to perform their part of the agreement and the defendants were not.

11. On appeal to the High Court, the High Court agreed with the trial court judgment on all the issues, but differed only on the finding with regard to limitation. The High Court took the view that the agreement dated 10.3.1989 was one in which a date was fixed for performance and, therefore, the suit was hopelessly barred by limitation. In this view of the matter, the High Court set aside the decree and dismissed the suit.

34. Thus, this was a situation where the original agreement of 10.3.1989 had a "fixed date" for performance, but by the subsequent letter of 18.6.1992 the Defendants made a request for postponing the performance to a future date without fixing any further date for performance. This was accepted by the Plaintiffs by their act of forbearance and not insisting on performance forthwith. There is nothing strange in time for performance being extended, even though originally the agreement had a fixed date. [Section 63](#) of the Indian



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Contract Act, 1872 provides that every promisee may extend time for the performance of the contract. Such an agreement to extend time need not necessarily be reduced to writing, but may be proved by oral evidence or in some cases, even by evidence of conduct including forbearance on the part of the other party. Thus, in this case there was a variation in the date of performance by express representation by the Defendants, agreed to by the act of forbearance on the part of the Plaintiffs. What was originally covered by the first part of [Article 54](#), now fell within the purview of the second part of the Article. Pazhaniappa Chettiyar v. South Indian Planting and Industrial Co. Ltd. and Anr. was a similar instance where the contract when initially made had a date fixed for the performance of the contract but the Court was of the view that "in the events that happened in this case, the agreement in question though started with fixation of a period for the completion of the transaction became one without such period on account of the peculiar facts and circumstances already explained and the contract, therefore, became one in which no time fixed for its performance." and held that was originally covered by the first part of [Article 113](#) of the Limitation Act, 1908 would fall under the second part of the said Article because of the supervening circumstances of the case.

35. In the present case, it was only on 31.8.1995/1.9.1995 that the plaintiffs realised that there was a refusal to perform, when they were forcibly evicted from the godown. It is only then that the Plaintiffs had notice of refusal of performance. Counted from this date, the suit was filed within 15 days and, therefore, was perfectly within the period of limitation. We, therefore, disagree with the High Court on this issue of limitation and hold that the suit filed by the Plaintiffs was within the period of limitation and was not liable to be dismissed under [Section 3](#) of the Limitation Act. All other issues concurrently have been held in favour of the Plaintiffs. Hence, there is no impediment to the Plaintiffs succeeding in the suit.”

13. The learned Counsel for the Appellants also relied on the reported ruling of this Court in **(2001) 3 M.L.J. 322** in the case of **Viswanathan vs. Ramakrishna Chettiar** wherein this Court had observed as follows:

“12. I have already referred to the plaint averments and the relief claimed by the plaintiff. Except the decree for specific performance directing the defendant to execute the registered partnership deed with the plaintiff as per the agreement dated 19.11.1978 and an agreement



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letter dated 31.1.1980 in respect of A.V.S. Bus Service at Pondicherry, the plaintiff has not prayed for any other relief including the refund of amount received by the defendant. In such a circumstance, in the absence of specific claim in the plaint, as per Sub-section (2) of [Section 22](#) of the Act, refund of the amount already paid cannot be granted. However, proviso to Sub-section (2) of [Section 22](#) of the Act enables the aggrieved person to file appropriate petition for amendment of the plaint at any stage of the proceedings. Only on the above said provision, the Respondent in the appeal has filed CMP.NO. 10995 of 2001 for amendment of the plaint in O.S.No.39 of 1983 on the file of the First Additional Subordinate Judge, Pondicherry for return of the sum of Rs. 60,000.00 to him (Respondent herein) with interest at 12% per annum from the date of plaint till realisation.”

Therefore, the learned Counsel for the Appellant submitted that the judgment of the learned I Additional District Judge in O.S.No.87 of 2020, dated 21.12.2023 is to be set aside and the suit is to be decreed in favour of the Appellants/Plaintiffs.

14. The learned Counsel for the Respondent Thiru.N.Manokaran submitted that the judgment of the learned I Additional District Judge, Namakkal, is a well reasoned judgment based on proper appreciation of evidence. It is to be noted that the suit property was originally purchased by the Defendant Rajendran in the year 1989 from Chellammal and her sons and daughters for Rs.89,000/- in the year 1989, whereas the sale agreement under Ex.A-1 was executed for Rs.57,500/-. Therefore, on the date of filing of the suit in the year 2014, the property is worth crores of rupees. The learned Counsel for the Respondent invited the attention of this Court to the cross-



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examination of the son of the original Plaintiff, Plaintiff 4 as P.W-1 and the cross-examination of the attesting witness P.W-2. The son of the Plaintiff admitted that the original Plaintiff was serving as Police Officer earlier but denied the suggestion that the sale agreement was executed as security for the loan availed by the Defendant who is a semi-literate and not worldly-wise. The learned Counsel for the Respondent invited the attention of this Court to the fact that the original sale deed in the name of the Defendant obtained from Chellammal in the year 1989 was handed over to the Plaintiff which itself gives out the nature of the transaction. It was not a sale agreement but a mortgage by deposit of title deed. Therefore, the Defendant had caused legal notice to the Plaintiff. If it had been the sale agreement even though registered as per the sale agreement deed dated 13.05.1991 what prevented the Plaintiff from approaching the Court within a specific time within three years from the date of expiry. When there is no specific time limit specified in the sale agreement that itself indicates that it was not a sale agreement as per the provisions regarding sale agreement deed. That shows that there was no intention on the part of the Defendant to execute the sale deed. Ex.A-2 was created by the Plaintiff and the petition was filed before the trial Court seeking to compare the signature and thumb impression. The learned Additional District Judge had dismissed the petition to compare the signature against which appeal or revision was not preferred. That gives a presumption to the



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Court that the Plaintiff was aware of the consequences if the same was not referred for expert opinion. Ex.A-2 does not have any evidentiary value in a court of law since the Defendant had disputed Ex.A-2. The suit had been preferred based on Ex.A-2 where there is no time limit mentioned and a story had been created as though some other legal heirs of Chellammal had to make endorsement to get the sale deed from the Defendant. Therefore, the suit as filed by the Plaintiff was not maintainable on the date of filing of the suit. It is time barred suit and it was dismissed by the learned I Additional District Judge based on proper appreciation of evidence.

15. The learned Counsel for the Respondent submitted that the Plaintiff had not sought alternate relief. Therefore, he is not entitled to refund of the advance amount or the amount as stated in the plaint. The learned Counsel for the Respondent invited the attention of this Court to Article 54 of the Limitation Act that the suit itself is not maintainable. If the sale agreement deed dated 13.05.1991 had been true, he ought to have approached the Court within three years as per Article 54 of the Limitation Act. Therefore, based on Ex.A-2, the suit is not at all maintainable. The argument of the learned Counsel for the Appellant was that there is no prescribed time limit. Therefore, the suit was within time as per Ex.A-2 also has to be rejected. Ex.A-2 was disputed by the Defendant. Therefore, the Plaintiff filed I.A.No. 73 of 2017 that was



dismissed. Therefore, the Plaintiff has to file appeal or revision to protect his right. Since he had not filed appeal or revision Ex.A-2 has no evidentiary value. Therefore, Ex.A-2 is a document created for extension of time had not been proved. The Plaintiff had not sent pre-suit notice for execution of sale deed. Also the learned Counsel for the Respondent invited the attention of this Court to Section 62 of the Contract Act which reads as under:

“62. Effect of novation, rescission, and alteration of contract.—

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.”

16. The learned Counsel for the Respondent invited the attention of this Court to Article 54 and Article 62 of the Limitation Act which are extracted as under:

	Description of suit	Period of limitation	Time from which period begins to run
54.	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.
62	To enforce payment of money secured by a mortgage or otherwise charged upon immovable property.	Twelve years	When the money sued for becomes due

17. In support of his contention, the learned Counsel for the Respondent relied on the reported ruling of the Honorable Supreme Court



reported in (2000) 10 SCC 130 in the case of **Delhi Development Authority vs. Skipper Construction Co. (P) Ltd., and others** wherein it has been observed as under:

28. Learned counsel made submissions on the following issues:

(1) Whether the purchasers under agreements in respect of Jhandevalan property have a statutory charge in view of [Section 55\(6\)\(b\)](#) of the Transfer of Property Act -against the vendor's interest in the property? Whether such charge can be enforced against any substituted security?

(2) Whether the purchasers are entitled to interest under [Section 55\(6\)\(b\)](#) of the Transfer of Property Act and also in view of the observations made in the judgment of this Court dated May 6, 1996?

(3) Whether the period of limitation for enforcing claims by the purchasers would be 12 years under the [Limitation Act](#)?

(4) Whether in view of the words 'subject to a contract to the contrary' used in [Section 55\(6\)\(b\)](#) of the Transfer of Property Act and in view of the term in the agreement of sale that Skipper will not be liable for interest, the purchasers cannot claim interest? (5) Whether the purchasers can rely on the finding of 'fraud' given by this Court in its order dated 15.1.1995 to contend that the claim for interest is sustainable because of fraud by Skipper on the purchasers?"

18. He relied on another reported decision in **2017 SCC OnLine Mad. 1573** in the case of **K.Savithiri and another vs. L.Ramasamy and others** wherein this Court had observed in paragraphs 18 and 19 as follows:

“18. Be that as it may, after Ex.B2, legal notice dated 11.09.1996, the plaintiff kept quiet for more than ten (10) years, without performing their part of the contract. In the pleadings also, except stating that they were ready and willing to purchase the property at the relevant time, they never pleaded what was the steps which they have taken during contract to perform their obligation. Even in the chief examination, P.W.1's evidence is silent about that aspect. In the cross examination, P.W.1 has admitted that she does not know whether they have taken any steps to get the approval from the Government to convert the suit properties as flats. P.W.1 also admitted that



on 06.8.1996 itself, the defendants were ready and willing to sell the property and they also issued legal notice on that aspect.

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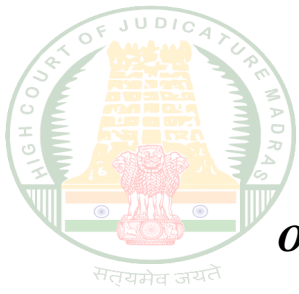
19. From the evidence of P.W.1, it could be easily seen that, after entering into contract on 28.11.1995 and paying a sum of Rs.5,00,000/- as advance towards the sale consideration, the plaintiffs have not taken any steps to perform their part of the contract. They never shown their readiness and willingness during the relevant period. Whereas the defendants have issued legal notice, Exs.B1, dated 11.09.1996 showing their readiness to execute the sale deed in favour of the plaintiffs. But the plaintiffs except sending legal notice under Ex.B1, have not taken any steps to get the sale registered in their favour. Whereas for the first time, under Ex.A6 dated 30.6.2005, almost after a lapse of 10 years, the plaintiffs have issued notice to the defendants for return of Rs.5,00,000/-, which has been paid on the date of agreement, and the same was also replied by the defendants.”

19. The suit was filed after 12 years. Article 54 of the Limitation Act has no application. Article 62 has application. Suit has been filed after 33 years after entering into a sale agreement. No equity is involved in this case. The Plaintiff as Appellant seeks injunction at this stage, Possession is not with him. He had slept over his right for three decades. Appeal is against the principle of specific performance. The Plaintiff is not entitled to refund of Court fee and refund of advance amount also. The learned Counsel for the Respondents sought dismissal of the suit.

Points for determination:

(i) Whether the suit for specific performance framed is maintainable?

(ii) Whether the judgment dated 21.12.2023 passed in



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O.S.No.87 of 2020 by the learned I Additional District Judge,

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20. Heard the learned Counsel for the Appellants Thiru.T.L.Thirumalaisamy, and the learned Counsel for the Respondent Thiru.N.Manokaran.

21. Perused the plaint, written statement, issues framed, evidence of P.W-1 and P.W-2, the documents under Ex.A-1 to Ex.A-5, evidence of D.W-1, the documents under Ex.B-1 and Ex.B-2, the judgment of the learned I Additional District Judge, Namakkal, in O.S.No.87 of 2020, dated 21.12.2023, the rulings filed by the learned Counsel for the Appellants in support of his contention and the rulings filed by the learned Counsel for the Respondent in support of his contention.

22. From the evidence, it is found that on the date of trial, unfortunately, the Plaintiff died. The Plaintiff Ramachandran was the person who had entered into the sale agreement with the Defendant Rajendran. The son of the Plaintiff Kathiravan had examined himself as P.W-1 regarding the details put to him in cross examination which he could not answer from his personal knowledge. Still the evidence of the son of the Plaintiff has to be



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considered in the light of the document. He had discharged the burden cast

upon him under Section 101 of the Indian Evidence Act, as he had entered into the shoes of his father and he had insisted on the plaint averments in his stand.

P.W-2 Khaleel happens to be a real-estate broker. He admitted in his cross examination. From the cross examination of P.W-2, it is found that he was not aware of the details regarding the transaction between the Plaintiff and Defendant. Even though the sale agreement was of the year 1991, as pointed out by the learned Counsel for the Defendant that Ex.A-2 was pressed into service by the Plaintiff as though the Defendant had executed it. On comparison with Ex.A-1 with the naked eye, it is found that the thumb impression in Ex.A-2, is not that of the Defendant as in the application in I.A.No.73 of 2017 which was filed by the Plaintiff for comparison of thumb impression, was dismissed by the learned I Additional District Judge, Namakkal, against which the Plaintiff had not preferred any Appeal.

Therefore, the Plaintiff cannot press Ex.A-2 for his defense that the suit was filed on time and that there is no time limit prescribed under Ex.A-2. When the signature or thumb impression is disputed by the Defendant, the efforts taken by the Plaintiff to compare it with the hand-writing or fingerprint experts was dismissed by the learned I Additional District Judge against which she had not preferred any appeal, then naturally Ex.A-2 has to be rejected as it has not been proved that it was executed by Defendant. The claim by the Plaintiff before



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the trial Court that the original sale deed in favor of the Defendant in the year 1989 that he had obtained from Chellammal was handed over to the Plaintiff is to be treated as it is a security for the loan availed by the Defendant. When the property is valued for Rs.89,000/- in the year 1989 the same property of 1 acre 84 cents and 42 cents as per the schedule of property given in the plaint, which fetched Rs.89,000/- in the year 1989 cannot be expected to be sold for a meagre sum of Rs.57,500/- in the year 1991. If it had been the reverse, when the property fetched Rs.57,500/- in the year 1981, then the sale agreement fixed at Rs.89,000/-, could have been accepted. However, it is not so. Regarding immovable properties, the value increases every year. Here the value is shown as decreased, which is found unusual. Under those circumstances, the claim by the Defendant that the sale agreement was not intended for sale of the property has more force from the point of view of an ordinary prudent man. A property that had a value of Rs.89,000/- in the year 1989 was sold for a meager amount of Rs.57,500/- is found unacceptable and the Plaintiff seeking for Specific Relief Act for execution of the sale deed in the year 2014 for the same amount of Rs.57,500/- for an extent of 1 acre 84 cents plus 42 cents = 2 acres 26 cents is found unfair by any means. When Ex.A-2 is rejected, naturally, the arguments of the learned Counsel for the Respondent in the Appeal has to be accepted that the suit was belated. Apart from that, as per Ex.A-1, there is no time limits mentioned in Ex.A-1. Usually



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a case of specific performance is filed before the expiry of the time mentioned in the sale agreement. Here the sale agreement need does not mention about any time limit. That is also, found unusual creating suspicion against the *bona fide* of the claim that the sale agreement was executed for the purpose of sale.

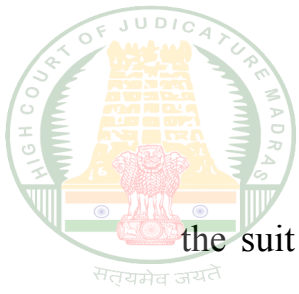
23. The principle of contract claims that the parties to the contract shall be equally placed. Here, the Defendant claims that he was a vendor of old ion scrap and newspapers. He was semi-literate and not worldly wise. For his business, he needed Rs.20,000/- for which he sought loan from the Plaintiff who was an acquaintance. The Plaintiff was ready to extend the loan provided the Defendant was ready to handover title deeds. Accordingly, he had handed over title deeds, which is treated as security for the loan. It cannot be treated as possession handed over to the Plaintiff. If what had been claimed by the Plaintiff is true, the Plaintiff should have furnished documents regarding possession of the property. Practically the suit properties are agricultural properties. What had been the crops in the suit property from the year 1999 till 2014 ought to have been filed by the Plaintiff as proof of possession. No document had been filed regarding possession. Therefore, the claim made by the Plaintiff before the trial Court that the possession was handed over to the Plaintiff is not true and cannot be accepted by any Court of law. On perusal of the plaint, it is found that the averments are unusual from the usual suit for



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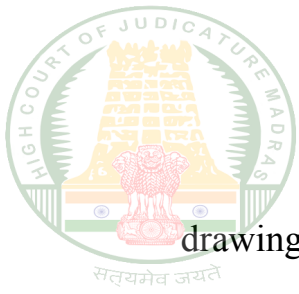
specific performance of contract, instead of the Plaintiff issuing pre-suit notice it was the Defendant who had issued notice under Ex.B-1 seeking the Plaintiff to accept the loan amount and hand over the title deeds, the sale deed of the year 1989 obtained by the Defendant from Chellammal which was handed over to the Plaintiff when he availed loan from the Plaintiff. The claim made by the Defendant in the written statement is found to be the averments already stated in the legal notice issued by the Defendant under Ex.B-1. Only after notice was issued by the Defendant, the Plaintiff had issued reply notice reiterating for specific performance of contract. In continuation of the same only, the suit had been filed. By the time the suit was filed, Ex.A-2 was pressed into service which was disputed by the Defendant. When Ex.A-2 does not mention any time limit in which the Defendant disputes that he was a party, the same cannot be pressed into service. Therefore, the filing of the suit based on the sale agreement dated 13.05.1991 by instituting the suit in the year 2014, which is to be treated as Plaintiff had slept over his right for decades. From the evidence of P.W-1, it is found that the son of the original Plaintiff is in the business of money lending. Therefore, the claim of the Defendant is found justified that for loan availed by him, he had executed Ex.A-1 sale agreement not with an intention to sell the property. Even otherwise, no ordinary prudent man will sell a property that fetches value of Rs.89,000/- in the year 1989, after two years for a lesser value of Rs.57,500/-. If Ex.A-1 is pressed into service, then



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the suit ought to have been filed before the expiry of one year period from 1991 before expiry of extended one year period. On the contrary, Ex.A-2 had been executed by the Plaintiff as though Defendant had executed. Ex.A-2 was disputed by the Defendant during trial. Therefore, the Plaintiff had filed I.A.No.73 of to 2017, which was dismissed by the learned I Additional District Judge against which he had not preferred any appeal or revision. Therefore, the claim of the Appellant that the learned I Additional District Judge dismissing the suit of the Plaintiff for specific performance of contract is perverse cannot be accepted.

24. On perusal of the judgment dated 21.12.2023 in O.S.No.87 of 2020 by the learned I Additional District Judge, it is found that on proper appreciation of evidence, the learned I Additional District Judge had rejected the claim of the Plaintiff and dismissed the suit of the Plaintiff for specific performance of contract for sale of property. The arguments of the learned Counsel for the Appellant that the Defendant before the trial Court had not entered the witness box only his wife had entered the witness box and she had in her evidence claimed that her husband is not in good health. The questions put to her in cross examination that he is mentally healthy was admitted by her and claiming that he has given to intoxicating drinks and therefore, he may falter will not help the Plaintiff to seek a decree against the Defendant by

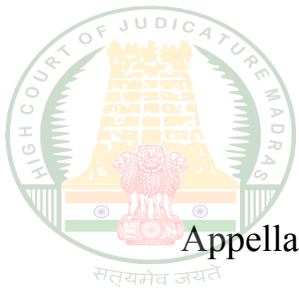


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drawing adverse inference against the Defendant.

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25. It is to be noted that the Plaintiff had approached the Court for the relief of specific performance of contract for sale. Therefore, the Plaintiff had to stand or fall on the strength of his/her evidence. The Plaintiff was not alive on the date of trial. Still the legal heirs of the Plaintiff had impleaded themselves in continuation of the suit to proceed with the suit and they were aware of the consequences. The Plaintiff had not filed the suit within three years as per Ex.A-1. The attempt of the original Plaintiff or the Plaintiffs 2 to 4 in pressing Ex.A-2 had not been successful. From the evidence of the Plaintiffs, the claim made by the Plaintiffs in the plaint cannot at all be appreciated. The Defendant was able to probablise the case that the sale agreement was not intended for sale of the property, it was executed only for the purpose of security for the loan, is found probable in the facts of this case, particularly, when the sale agreement deed was for lesser value than the sale price in the year 1989, in the year 2014, the value of the property could have multiplied many times. Usually in borrowal of money the person who lends money is in an advantageous position. The person who availed the loan is not equally placed. Therefore, the claim of the Plaintiffs that Ex.A-1 was executed with an intention to sell the property cannot be accepted in the facts and circumstance of this case. The rulings cited by the learned Counsel for the



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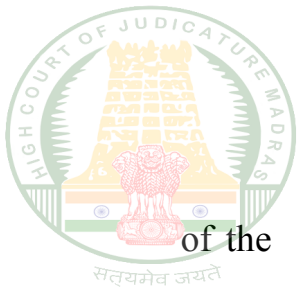
Appellants in **(2005) 12 SCC 764** in the case of ***S.Brahmanand and others vs.***

K.R.Muthugopal (Dead) and others and **(2001) 3 M.L.J. 322** in the case of ***Viswanathan vs. Ramakrishna Chettiar*** are not applicable to the facts of this case and the same are rejected.

26. The rulings relied by the learned Counsel for the Respondent in **(2000) 10 SCC 130** in the case of ***Delhi Development Authority vs. Skipper Construction Co. (P) Ltd., and others*** **2017 SCC OnLine Mad. 1573** in the case of ***K.Savithiri and another vs. L.Ramasamy and others*** are applicable to the facts and circumstances of this case and the same are found acceptable.

27. In the light of the above discussion, the points for determination are answered against the Plaintiffs and in favour of the Defendant. The suit for specific performance framed is not maintainable. The judgment dated 21.12.2023 passed in O.S.No.87 of 2020 by the learned I Additional District Judge, Namakkal, is found proper which does not warrant any interference by this Court.

28. From the plaint averments it is found that the Plaintiff had not sought alternate relief of refund of advance amount. But in the prayer, it is stated that “the Court may pass appropriate order in the facts and circumstances



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of the case, as per equity”. The learned Counsel for the Respondent in the appeal had invited the attention of this Court to Section 22 of the Specific Relief Act, when a specific prayer is not pleaded for alternate relief the Court exercising discretion in equity shall not grant alternate relief since the Plaintiff had not sought alternate relief. Here Civil Court exercising discretion in the facts and circumstances of the case as the Defendant had in the written statement stated that he was ready and willing to return the amount availed as loan along with interest, the Plaintiff refused to accept it. Now, in continuation of the same, the suit had been filed. Pending suit, the original Plaintiff Ramachandran died, only his son Kathiravan had examined himself as P.W-1. Therefore, as per equity, the Plaintiff had to be granted alternate relief under Section 151 of the Code of Civil Procedure by ordering refund of the amount availed by the Defendant. As per the plaint averments Rs.57,500/- was paid, which is disputed by the Defendant as Ex.A-2 is not proved and Rs.50,000/- is under Ex.A-1. As per the Defendant, he had availed only Rs.20,000/- as loan. Since the Plaintiff had sought specific performance for the property of an extent of 2 acre 26 cents, which will fetch value of crores of rupees as per the arguments put forth by the learned Counsel for the Respondent in the appeal, the Defendant is directed to refund Rs.50,000/- to the Plaintiff.

In the result, **this Appeal Suit is dismissed.** The judgment and decree



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dated 21.12.2023 made in O.S.No.87 of 2020 on the file of the I Additional District Court at Namakkal is confirmed. The Defendant is directed to refund the advance amount of Rs.50,000/- to the Plaintiff. No costs. Consequently, connected miscellaneous petitions are closed.

30.06.2025

srm

Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order

To

1. The I Additional District Court,
Namakkal.
2. The Section Officer,
V.R. Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J.,

srm



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Judgment made in
A.S.No.520 of 2024

30.06.2025