



S.A.No.432 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	23.07.2025
Pronounced on	19.09.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.432 of 2019 and

C.M.P. No.6595/2019

1. Kaliammal
2. Marimuthu
3. Palaniappan
4. Saroja

...Appellants

Vs.

Gunasekaran

...Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 09.10.2018 passed in A.S. No.3 of 2011, on the file of the Principal Subordinate Judge, Namakkal, confirming the Judgment and decree dated 26.10.2010 passed in O.S. No.888 of 2004, on the file of the Additional District Munsif Court, Namakkal.

For Appellants : Mr.T.Dhanyakumar



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: Mr.S. Mukunth, Senior Advocate
for Ms.T.R.Gayathri
for M/s. Sarvabhauman Associates.

JUDGMENT

In this Second Appeal, challenge is made to the decree and judgment dated 09.10.2018 passed in A.S. No.3 of 2011, on the file of the Principal Subordinate Judge, Namakkal, confirming the Judgment and decree dated 26.10.2010 passed in O.S. No.888 of 2004, on the file of the Additional District Munsif Court, Namakkal.

2. For the sake of convenience the parties are referred to as per their ranking in the trial court.

3. The defendants in O.S. No.888 of 2004 on the file of the Additional District Munsif, Namakkal, are the appellants in the present appeal. The respondent/plaintiff filed the above suit for specific performance directing the defendants 1 to 3 to execute the sale deed in favour of the plaintiff after receiving the balance sale consideration



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failing which the court to execute the sale deed and for permanent injunction restraining the defendants, their men from interfering or obstructing plaintiff's peaceful possession and enjoyment and for alternative relief directing the defendants 1 to 3 to repay the sale consideration of Rs.45,000/- to the plaintiff and for costs.

4. The Case of the Plaintiff in brief is that the Suit Property belonged to the Defendants 1 to 3. The Plaintiff entered into a Sale Agreement with Defendants 1 to 3 on 22.08.1994 for purchase of the Suit Property for Rs.50,000/- and paid Rs.45,000/- as Advance Sale Consideration to them. The balance amount Rs.5,000/- was decided to be paid while executing the Sale Deed. The Defendants 1 to 3 handed over the Possession of the Suit Property to the Plaintiff and the Plaintiff is in Possession of the Suit Property from the date of Sale Agreement and residing in the Suit Property by paying Tax. The Plaintiff was always ready and willing to perform his part of the Contract and he approached the Defendants 1 to 3 on 09.06.2003 for execution of Sale Deed. But the Defendants 1 to 3 demanding more amount, as the value of the Suit



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Property has increased, refused to execute Sale Deed in favour of the Plaintiff. The Defendants 1 to 3 executed Sale Deed in favour of the 4th Defendant and so the 4th Defendant is impleaded as a party to the Suit. The Sale in favour of the 4th Defendant is not valid and the same is not binding on the Plaintiff. The Defendants are disturbing the Possession of the Plaintiff in the Suit Property. So the Plaintiff has filed the Suit for Specific Performance of Contract and for Permanent Injunction against the Defendants.

5. The claim of the plaintiff was resisted by the 4th Defendant, which was adopted by the Defendants 1 to 3, by stating that the averments that the Defendants 1 to 3 entered into a Sale Agreement with the Plaintiff and received Rs.45,000/- as advance are utter false. As there is no connection between the Plaintiff and the Suit Property, the averment that he is residing in the Suit Property by paying Tax is false. The averments that the Plaintiff met the Defendants on 09.06.2003 and the Defendants demanded more amount are also false. The 4th Defendant purchased the Suit Property on 07.10.2002 for Rs.32,000/- from the



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Defendants 1 to 3 and Minor Sons of the Defendants 2 and 3. The Partition Deed was also handed over by the Defendants 1 to 3 to the 4th Defendant and the possession of the Suit Property is with the 4th Defendant. The alleged Sale Agreement is a forged document. After the suit, the Defendants 1 to 3 have informed to the 4th Defendant that they never executed any Sale Agreement. Even if the Sale Agreement is true, it is not binding on the 4th Defendant as she is a bonafide purchaser for valuable consideration without notice. The Plaintiff has put some of his things in the Suit Property after taking Possession of the Suit Property by the 4th Defendant and on Police Complaint, the Plaintiff accepted to vacate the Suit Property. So the alleged Possession claimed by the Plaintiff is false. The Plaintiff is residing near the Suit Property and attempting to grab the Suit Property. The Suit is barred by Limitation. The Plaintiff is not entitled to any reliefs. So there is no cause of action in the Suit. Hence the Suit is liable to be dismissed with costs.

6. Based on the above pleadings, evidence and arguments advanced



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by the respective counsel, the trial court, vide its decree and judgment dated 26.10.2010, decreed the suit by granting the relief of specific performance contract. Aggrieved by this, the defendants have preferred the appeal suit in A.S. No.3 of 2011 before the learned Principal Subordinate Judge, Namakkal. The first appellate court also dismissed the appeal suit vide its decree and judgment dated 09.10.2018 confirming the judgment and decree passed by the trial court. Assailing the said judgment and decree, the present second appeal is preferred by the defendants.

7. The second appeal has been admitted on the following substantial questions of law:

- i. *"While the suit is of the year 2003, without written demand for specific performance of an agreement dated 22.08.1994, can it be said to be within time?"*
- ii. *Whether the plaintiff has proved that he has been ready and willing to perform his part of the contract throughout the contract period, i.e. from the year 1994 til 2003?*



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WEB COPY *iii. Whether the plaintiff is not guilty of laches?"*

8. The learned counsel appearing for the appellants/defendants submits that the respondent/plaintiff has approached the Court with unclean hands and that Ex.A1 agreement is a fabricated document. His further contention is that the limitation to file a suit under Article 54 of the Limitation Act, 1963, is three years. The suit agreement is dated 22.08.1994 and the period of three years expired on 22.08.1997. But the suit was filed on 26.06.2003. Hence, the suit was clearly barred by limitation. The courts below erroneously held that the period of limitation commences from the date of demand and failed to note that if no time limit is prescribed under Ex.A1 agreement, the date of agreement alone would be crucial factor for deciding the question of limitation. The learned counsel further submits that, even according to the averments in the plaint, the plaintiff has made demand for the first time only on 09.06.2003 against the appellants/defendants 1 to 3 for execution of the sale deed. However, the same was not proved by the plaintiff. No legal notice was issued prior to filing of suit and the plaintiff has not given



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sufficient reason as to why he waited for 9 years having paid a sum of Rs.45,000/- out of the total consideration of Rs.50,000/- and the balance amount to be paid is only Rs.5,000/-. The plaintiff failed to approach the court within a reasonable time and waited for 9 years for filing the above suit. Hence the suit ought to have been dismissed on the ground of laches. He would further submit that there is no pleading with regard to readiness and willingness of the plaintiff from the date of Ex.A1 sale agreement. The plaintiff failed to aver and prove that he is always ready and willing to perform his part of contract. The learned counsel further submits that Ex.A1 sale agreement is a forged and created document which is evident from the conflicting statement given by P.W.1 to P.W.4. Since the 4th defendant has purchased the suit property under Ex.B1, the plaintiff is not entitled for the specific relief. The 4th defendant is a bonafide purchaser for value under Ex.B1. Hence the courts below ought to have dismissed the suit on the ground that the suit is barred by limitation and that Ex.A1 is a forged document and also on the ground that the plaintiff failed to aver and prove that he is always ready and willing to perform his part of the contract. He would further submit that it



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is the duty of the plaintiff to approach at the earliest as per Article 54 of the Limitation Act, 1963. It is his further contention that since the 4th defendant had purchased the property from the defendants 1 to 3, the suit ought to have been dismissed at the threshold. Since the 4th defendant, the subsequent purchaser, pleaded that he was the bonafide purchaser for value without notice and bought the property in good faith, the suit ought to have been dismissed. He would further submit that the basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout, entitling him to specific relief. The provision imposes a personal bar. The court is to grant relief on the basis of the conduct of the person seeking relief. In the present case, the plaintiff having waited for 9 years for filing a suit for specific performance, is not entitled to get the relief of specific performance. In support of his contentions, he relied on the following judgments.

i. Judgment of this court in the case of J. Baskaran vs. T. Pappa (S.A. No.710 of 2011).



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WEB COPY **ii. *B. Vijaya Bharathi vs. P. Savitri & others* reported in *CDJ 2017***

SC 953.

***iii. A.S.M. Balasubramanian vs. S.P. Swaminathan* reported in
*2012-2-L.W. 917.***

***iv. P. Retnaswamy vs. A. Raja and another* reported in *2008 (3)*
*CTC 1.***

***v. Pappammal @ T. Pappa vs. P. Ramasamy* reported in *2012-4-L.W.*
*435.***

vi. K. Nirmala vs. Sellamuthu* reported in *2014-4-LW72

9. On the other hand, the learned counsel for the respondent/plaintiff submits that the defendants failed to establish that Ex.A1 sale agreement is a forged document and that Ex.C1 Expert's opinion is not the sufficient piece of evidence. He would further submit that except for the 4th defendant, who is the subsequent purchaser, the defendants 1 to 3 failed to appear and adduce evidence in respect of Ex.A1 sale agreement. Moreover, the 4th defendant deposed that he has no objection in decreeing the suit in favour of the plaintiff. Hence,



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presumption is that the case set out by the defendants is false. On the other hand, the plaintiff has proved the execution of Ex.A1 sale agreement by examining the witness to the documents. Hence, the courts below has rightly granted the relief of specific performance in favour of the plaintiff, which warrants no interference by this Court.

10. Heard on both sides. Records perused.

11. At the outset, the learned counsel for the appellants/defendants submits that the courts below erred in decreeing the suit in favour of the plaintiff applying Article 54 of the Limitation Act, holding that in the absence of any specific date for performance of the contract, the relief of specific performance has to be sought from the date of denial of execution. Therefore, the suit is not barred by limitation. It was urged that the courts below committed a serious error in law by applying Article 54 of the Limitation Act, to grant the relief of specific performance in favour of the respondent/plaintiff. Thus the defendants have raised the question of limitation on the basis of the fact that Ex.A1 agreement of



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sale was dated 22.08.1994 and the suit was filed only on 26.06.2003, which is beyond the period of 3 years from the date of execution of sale agreement. It is submitted that the date of agreement alone would be a crucial factor for deciding the question of limitation and not the date of denial of execution of sale deed.

12. As a matter of fact, the limitation for filing a suit for specific performance in terms of Article 54 of the schedule to the Limitation Act, 1963, is 3 years "from the date fixed for performance or if no such date is fixed when the plaintiff has notice that the performance is refused". Admittedly under Ex.A1 there is no mention about the time to fulfill the contract to execute the sale deed. In the present case, though the original date of agreement is 22.08.1994, the plaintiff approached the defendants 1 to 3 demanding them to execute the sale deed on 09.06.2003 and the same was denied by the defendants 1 to 3, the suit was filed on 26.06.2003 is well within the period of 3 years.

13. Though the defendants would contend that Ex.A1 is a fabricated document, the defendants 1 to 3 failed to appear and adduce



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evidence before the trial court and state their case on oath and offer themselves for cross examination by the other side. Hence, the courts below rightly held that presumption could be drawn against them that case set up by the defendants is incorrect. The possession of 4th defendant in the suit property is not proved. It is the specific case of the plaintiff that he is in possession of the suit property and that he was always ready and willing to perform his part of contract. Since the defendants 1 to 3 failed to appear and rebut the above contention of the plaintiff, the presumption is that the plaintiff was always ready and willing to perform his part of contract. Therefore, the judgments relied upon by the appellants/defendants is not applicable to the facts and circumstances of this case. No infirmity or perversity is found in the findings of the courts below which warrants interference by this court. Therefore, I do not see any question of law much less a substantial question of law in order to enable me to entertain this appeal.

14. In the result,



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i. The Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

ii. The decree and judgment dated 09.10.2018 passed in A.S. No.3 of 2011, on the file of the Principal Subordinate Judge, Namakkal, confirming the Judgment and decree dated 26.10.2010 passed in O.S. No.888 of 2004, on the file of the Additional District Munsif Court, Namakkal, is upheld.

19.09.2025

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

To

1. The Principal Subordinate Judge, Namakkal
2. The Additional District Munsif Court, Namakkal,
3. The Section Officer, VR Section, High Court, Madras.

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Pre-delivery judgment in
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