



A.S.No.460 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 17.07.2025**

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

A.S.No.460 of 2022  
and C.M.P.No.16611 of 2022

Gopal

... Appellant

Vs.

1. M.Sellappan

C.Ramasamy (Died)

Sengamalai (Died)

2. Gundumani @ Kaliammal

3. Sudha

4. Saravanakumar

... Respondents

**PRAYER :** Appeal Suit filed under Section 96 r/w 41 of Code of Civil Procedure to set aside the judgment and decree in O.S.No.155 of 2011 dated 01.12.2021 passed by the learned Sessions (Fast Track Mahila) Judge, Namakkal.

For Appellants : Mr.B.Gopalakrishnan

For R1 : Mr.N.Umapathi

For R2 to R4 : No Appearance



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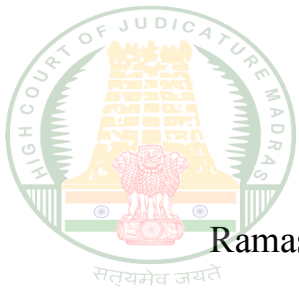
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## **JUDGMENT**

The suit for specific performance allowed by the trial Court is under challenge in the above appeal.

2. The case of the plaintiff is that a sale agreement was entered between him and one Ramasamy on 07.07.2010, in respect of the agricultural property which is morevfully mentioned in the suit schedule, wherein, the parties agreed to sell the property for a total consideration of Rs.21.50 lakhs, out of which, Rs.4 lakhs was paid in advance. It is further agreed that the contract has to be completed by the end of the Tamil month "Thai", which falls on 12.02.2011. In case, if the purchaser fails to pay the balance consideration within the said period, the advance amount of Rs.4 lakhs would be forfeited.

3. The further case of the plaintiff is that ten days prior to the expiry of the period, he caused a notice to the vendor, Ramasamy, informing him that he had not cleared the dispute in the property as promised and to clear the dispute and execute the sale deed by receiving the balance consideration. This notice was duly replied by the said



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Ramasamy through his counsel, stating that the property was agreed to be sold only after due information about the litigation and the purchaser aware of the dispute in the property. Further, he is ready and willing to receive the balance sale consideration and execute the sale deed. To this reply, the plaintiff issued a rejoinder on 19.03.2011 reiterating his contention that the sale agreement was subject to clearance of the dispute in the property. It was specifically stated in the agreement that the property is free from any encumbrance.

4. After the exchange of notice, the suit for specific performance was laid on 17.10.2011. With the same contention, as found in the pre-suit notice, the parties pleaded and went for trial. Pending the suit, the said Ramasamy died and his legal heirs were brought on record as defendants. Also pending suit, a partition suit was also instituted among the legal heirs of the said Ramasamy, which is the subject matter of O.S.No.305 of 2011. In the present suit for specific performance, the trial Court framed the following issues.

1. Whether the plaintiff is entitled to specific performance of the contract dated 07.07.2010 ?
2. Whether the time is the essence of the contract



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and the plaintiff failed to get execution of the sale deed within the stipulated time dated 12.02.2011?

3. Whether the plaintiff was ready and willing to perform his part of the contract?
4. To what relief if any the plaintiff is entitled to?

Further, the trial Court also framed the following additional issues.

1. Whether the suit property is an ancestral property of the defendants and Sengamalai ?
2. Whether the sale agreement dated 07.07.2010 will not bind the 1/3<sup>th</sup> share of the 2<sup>nd</sup> defendant ?
3. To what relief if any the plaintiff is entitled to?

5. To prove his claim, the plaintiff examined himself as PW1 and one Sivalingam as PW2. Marked Ex.A1 to Ex.A4 in support of his case. On the side of the defence, the 2<sup>nd</sup> defendant examined himself as DW1 and marked Ex.B1 to Ex.B3.

6. The trial Court has held that the plaintiff is entitled for specific performance of the contract dated 07.07.2010 (Ex.A1) and the legal heirs of Ramasamy were directed to receive the balance consideration of Rs.17.50 lakhs and execute the sale deed in favour of the plaintiff in respect of the suit property.

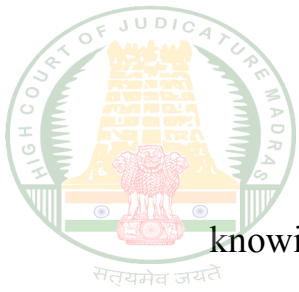


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7. The present Appeal has been filed on the point that the trial Court failed to consider that time is the essence of the contract and till the expiry of the time prescribed, the plaintiff was not ready and willing to perform his contract, despite the 1<sup>st</sup> defendant ready to receive the balance sale consideration and execute the sale deed. No piece of evidence was placed before the court to show the ready and willingness of the plaintiff. Despite the said fact, the trial Court had allowed the suit for specific performance ignoring the mandatory condition required under Section 16(c) of the Specific Relief Act.

8. The learned counsel appearing for the respondents submitted that even in the agreement Ex.A1, there is a clause which covenant that the vendor should convey the property free from encumbrance, which he admittedly failed to do. Thereafter, suit was filed. In the suit, the readiness and willingness has expressly pleaded in the plaint and also proved through witness that the sale consideration was ready with the plaintiff and was given to one Palanisamy. The balance sale consideration was duly deposited in the suit proceedings soon after the decree. As far as the conduct of the defendants, who had pleaded that the agreement was subject to the litigation and agreed by the plaintiff



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knowing about the pathway dispute, is an after thought and contrary to the covenant found in the agreement Ex.A1. The trial Court erred in relying upon the evidence of PW2 to conclude that the plaintiff was ready and willing to perform his part of the contract.

9. The point for consideration is whether the evidence of PW2 is sustainable.

10. The suit is for specific performance, the core issue to be decided is whether the plaintiff, who seeks specific performance, is continuously ready and willing to perform his part of contract and whether he has pleaded and proved his ready and willingness.

11. In this case, the total sale consideration is Rs.21.50 lakhs and out of which, Rs.4 lakhs was paid in advance, leaving a balance of Rs.17.50 lakhs, which ought to have been paid on or before 12.02.2011. The notice for calling upon the vendor to receive the balance sale consideration and to execute the sale deed was caused by the plaintiff on 09.02.2011. He has not unconditionally come forward to pay the balance sale consideration and get the sale deed registered. He had caused notice



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with condition that the litigation in the property has to be cleared. There is no reference about the litigation in the agreement Ex.A1. In the absence of a specific covenant that the litigation will be cleared before the execution of the sale agreement, the learned counsel for the respondent relies upon the general recital in the agreement that the vendor will keep the property free from encumbrance before executing the sale deed.

12. This Court is of the view that the certain general reference is not an impediment for either of the party to complete the sale agreement, when the alleged pathway dispute in fact is not in connection with the property which is subject matter of the sale agreement, but relates to a pathway adjacent to the suit property. That apart, this Court also finds that in the reply, the defendant has made very clear that if the plaintiff failed to pay the balance consideration before the end of tamil month 'Thai', the advance amount of Rs.4 lakhs shall be forfeited, which makes clear that the time is essence of contract.

13. The trial Court has not taken note of this fact while deciding the issue. Though the plaintiff has pleaded that he was ready and willing

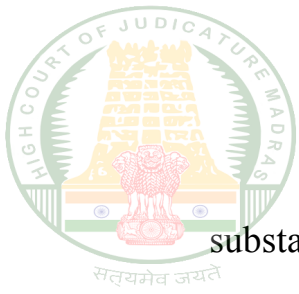


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to perform his part of contract, he had not whispered about the availability of funds or attempt to tender the balance sale consideration to the vendor. More so, when the vendor was ready to receive the money and execute the sale deed, the plaintiff cannot remain silent regarding the availability of funds and plead that he was ready and willing to perform his contract.

14. The delay of 8 months in filing the suit is yet another indication that the plaintiff was not ready and willing to perform his part of the contract, even after it was made known to the plaintiff that the advance amount would be forfeited if he fail to pay the balance sale consideration before 12.02.2011 and the get the sale deed registered.

15. Though the limitation for filing the suit for specific performance may be three years from the date of denial to perform the contract, when the terms of the agreement is very clear that the period fixed is the essence of contract and when the vendor himself has explicitly expressed his readiness to receive the balance sale consideration and execute the sale deed, the plaintiff inventing a new reason for not tendering the balance consideration had filed the suit with



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substantial delay. This conduct puts the plaintiff in disadvantage position while seeking specific performance.

16. The evidence, when read as a whole, clearly shows that the plaintiff was never ready with the balance sale consideration. He did not even choose to examine Palanisamy, with whom he claims that he had kept the balance sale consideration. Even that plea been brought to light only during the course of cross examination and not earlier. Depositing the balance sale consideration subsequent to the decree, nearly after 10 years of the agreement, does not indicate that the plaintiff was ready and willing to perform his part of the contract at all times. On this singular point, the judgment of the trial Court deserves to be reversed.

17. Accordingly, the Appeal Suit No.460 of 2022 is allowed by setting aside the judgment passed by the learned Sessions (Fast Track Mahila) Judge, Namakkal, in O.S.No.155 of 2011 dated 01.12.2021. Consequently, connected miscellaneous petition is closed. No costs.

18. Any amount deposited by the plaintiff in the suit account shall be permitted to be withdrawn by the plaintiff. Further, in the agreement,



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there is a specific clause for the forfeiture of the advance amount of Rs.4

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lakhs The said amount is not an earnest deposit but a portion of the total sale consideration. Therefore, in view of this Court, the entire amount cannot be forfeited even though there is a specific forfeiture clause. Hence, 50% of the amount shall be refunded back to the 1<sup>st</sup> respondent/plaintiff with interest at the rate of 6% from the date of receipt of the advance amount till the date of repayment.

**17.07.2025**

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To :

The Sessions (Fast Track Mahila) Judge, Namakkal.



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**Dr.G.JAYACHANDRAN, J.**

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***17.07.2025***

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