



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 07.10.2025

Judgment pronounced on : 31.10.2025

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THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.576 of 2022
& CMP.No.21907 of 2022

G.Aasha Devi

..Appellant

Vs.

1.G.Kala

2.G.K.Pavithra

3.Senbagam

..Respondents

Prayer: Appeal Suit filed under Section 96 of CPC, to set aside the judgment and decree of the Additional District Court, Dharmapuri, dated 15.02.2019 in O.S.No.18 of 2018.

For Appellant : Mr.P.Valliappan
Senior Counsel for Mr.K.M.Hareesh
for M/s.P.V.Law Associates

For Respondents : Mr.C.S.Kiran for Ms.B.Girija for R3
No appearance for RR1 and 2

JUDGMENT

The plaintiff in a suit for specific performance is the appellant, challenging the dismissal of his suit.



2.I have heard Mr.P.Valliappan, learned Senior Counsel for Mr.K.M.Hareesh, learned counsel for M/s.P.V.Law Associates, learned counsel for the appellant and Mr.C.S.Kiran, learned counsel for Ms.B.Girija, learned counsel for the 3rd respondent. There is no appearance on the side of the respondents 1 and 2.

3.Mr.P.Valliappan, learned Senior Counsel would, at the outset, bring to my notice that the trial Court has non-suited the plaintiff only on the ground that the suit sale agreement was unregistered and consequently, it cannot be looked into even for collateral purposes and therefore, was unenforceable in the eye of law.

4.Admittedly, the defendants 1 and 2, with whom the appellant had a sale agreement, had disposed of the suit property in favour of the 3rd respondent and even before the trial Court, the 3rd respondent has been arrayed as the 3rd defendant. The plaintiff has sought for specific performance of the agreement of sale dated 04.03.2016 with an alternate relief of refund of advance of Rs.10 lakhs paid to the defendants 1 and 2, as an advance sale consideration, together with interest.



5. Before the trial Court, the defendants 2 and 3 filed their written statement. The trial Court, after extracting the brief summary of the pleadings, without even proceedings to frame issues, framed a preliminary issue as to whether the suit is maintainable and proceeded to hold that the suit agreement being unregistered, there is a bar for the plaintiff to enforce the same and answered the issue against the plaintiff.

6. The only point that arises for consideration in the present appeal is as to whether an unregistered sale agreement can be enforced in a Court of law, by seeking specific performance or alternatively refund of advance paid under the said registered sale agreement.

7. Aggrieved by the dismissal of the suit on the ground of unenforceability of an unregistered agreement of sale, the plaintiff is before this Court.

8. Mr. P. Valliappan, learned Senior Counsel appearing for the appellant would submit that though Section 17 of the Registration Act mandates registration of even a sale agreement, in view of Section 49 of the Registration



Act and the proviso thereto, there is no bar for an agreement holder to seek specific performance of even an unregistered agreement of sale. The issue is no longer *res integra*. Under the Registration Act, Section 17 did not compulsorily require registration of agreements of sale. However, the Government of Tamil Nadu, by Act 29 of 2012, with effect from 01.12.2012, substituted clause (f) of Section 17 with new clauses (f), (g), (h) and (i), in and by which, the registration of an agreement of sale of immovable property of a value of more than Rs.100/- was made compulsory.

9.Mr.C.S.Kiran, learned counsel for the 3rd respondent would submit that the respondents 1 and 2 have disputed the very genuineness of the sale agreement and further even prior to the institution of the suit, the 3rd respondent has purchased the suit property and therefore, the appellant is not entitled to any relief. He would therefore pray for dismissal of the appeal.

10.Section 49 of the Registration Act, 1908, is extracted hereunder for easy reference:

49. Effect of non-registration of documents required to be registered.—No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

(a) affect any immovable property comprised therein,
or



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*(b) confer any power to adopt, or
(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:*

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.]

11.It is relevant to note that while amending Section 17, the Government of Tamil Nadu did not deem it necessary to amend Section 49. Insofar as a suit for specific performance, the proviso to Section 49 itself provides for receiving a contract for agreement for sale as evidence in a suit for specific performance. In such circumstances, a suit for specific performance based on an unregistered agreement of sale is certainly maintainable in the eye of law.

12.In fact, this issue came up for consideration before this Court, in *R.Munusamy Vs. G.Krishttapillai*, reported in (2014) 6 CTC 773; *Minor Ravi Bharathi Vs. P.Balasubramani and another*, reported in (2014) 8 MLJ 562; *D.Devarajan Vs. Alphonsoa Mary and another*, reported in 2019 (2) CTC 290 and *G.Veeramani Vs. N.Soundaramoorthy and others*, reported in 2019 (6) CTC 580 and even before the Hon'ble Supreme Court in *R.Hemalatha Vs. Kashthuri*, reported in (2023) 10 SCC 725. In all these decisions, the Courts



have held that an unregistered agreement of sale can be sought to be specifically enforced.

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13.The trial Court, without even noticing the settled legal position, has proceeded to non-suit the plaintiff, on the only ground that the suit sale agreement is unregistered. In view of the above, I am inclined to set aside the judgment and decree of the trial Court and remit the matter to the trial Court.

14.In fine, the Appeal Suit is is allowed. The judgment and decree of the Additional District Court, Dharmapuri, dated 15.02.2019 in O.S.No.18 of 2018, is set aside. The suit shall be called before the trial Court on 08.12.2025. The trial Court shall frame issues, within a period of two weeks from 08.12.2025 and the parties shall be permitted to lead oral and documentary evidence. The trial Court shall endeavour to dispose of the suit, after trial, on merits and in accordance with law, on or before 31.03.2026. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

31.10.2025

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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The Additional District Court, Dharmapuri.



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P.B.BALAJI.J.

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Pre-delivery judgment made in
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