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S.A.No.694 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2025

CORAM

**THE HONOURABLE MRS.JUSTICE R. KALAIMATHI**

S.A.No. 694 of 2023

and C.M.P.No.22052 of 2023

Chinnappan

...Appellant / Defendant

Vs.

Anthonysamy

...Respondent / Plaintiff

**PRAYER:-** This Second Appeal is filed under Section 100 of Code of Civil Procedure, 1908, to set aside the decree and judgment of the Sub Court, Ariyalur in A.S.No.39 of 2007 dated 06.01.2012 by confirming the decree and judgment in O.S.No.119 of 2004 dated 23.08.2005 on the file of District Munsif Court, Jeyankondam.

For Appellants : Mr.M.Tamilzavel

For Respondent : Ms.S.Vijaya  
for Lane Legal

### **JUDGMENT**

This Second Appeal has been preferred by the defendant against the judgment and decree dated 06.01.2012 passed in A.S.No.39 of 2007 by the Subordinate Judge, Jayankondam, Ariyalur District.



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2. The parties are indicated herein as per their litigative status and ranking before the trial Court.

3. According to the plaintiff, the suit property belongs to the defendant. The defendant has agreed to sell the suit property to the plaintiff and sale consideration was fixed at Rs.50,000/-. The plaintiff paid advance amount of Rs.45,000/- to the defendant herein and the defendant agreed to receive Rs.5000/- and to execute the sale deed in favour of the plaintiff. Both executed sale agreement on 15.09.1998. The period for performance was fixed as one year. As per the terms of the sale agreement, the plaintiff requested the defendant to execute the sale deed as he is ready to pay the remaining sale consideration of Rs.5000/-.

3.1. The defendant disregarded the request of the plaintiff. The plaintiff has been willing and ready to pay the remaining sale consideration and get the sale executed. He is ready to deposit the remaining sale consideration into the Court. The plaintiff caused to issue legal notice on 26.08.1999. Despite receipt of the notice, the defendant did not issue any reply notice.



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4. Per contra, the defendant would aver that the plaintiff and the defendant are cousin brothers. The defendant requested the plaintiff for loan, but the plaintiff did not want to lend the money based on pronote. If the defendant executes the sale agreement, the plaintiff was ready to advance loan to the defendant. As he was in dire need of money, he executed the sale agreement in favour of the plaintiff and received a sum of Rs.25,000/- as loan from the plaintiff. He did not have animus to execute a sale deed in favour of the plaintiff. As his business has not improved, he was not in a position to repay the debt of Rs.25,000/- to the plaintiff. Due to greediness over the suit property, the plaintiff caused to issue legal notice to the defendant on 26.08.1999. Having received the said legal notice, defendant issued reply notice on 11.09.1999.

5. Based on the divergent pleadings, the trial Court framed relevant issues. At trial, to substantiate the plaint details, on the plaintiff's side, three witnesses have been examined and three documents have been marked. Ex.A1 dated 15.09.1998 is the sale agreement executed by the defendant in favour of the plaintiff. On the defendant's side, two witnesses have been examined and two documents have been marked.



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6. At trial, upon consideration of the evidence and after hearing the arguments advanced by either side, the trial Court held that relying upon the evidence of the plaintiff's side concluded that Ex.A1 is in fact the sale agreement and the plaintiff having proved readiness and willingness to perform his part of contract, is entitled for the decree of specific performance and decreed the suit in respect of the relief of specific performance and in respect of mesne profits suit was dismissed.

7. Aggrieved, the defendant preferred appeal in A.S.No.39 of 2007 before the Sub Court, Ariyalur. The First Appellate Court upon consideration of the entire records and after hearing the arguments advanced by either side observed that, by examining P.W.2 and P.W.3, the plaintiff has proved the sale agreement and the receipt of Rs.45,000/- by the defendant from the plaintiff and confirmed the judgment of the trial Court and dismissed the appeal.

8. In a suit for specific performance, the basic principle of law is that the plaintiff who is the vendee must aver and prove that he has been continuously ready and willing to perform his part of the contract throughout. Therefore, the burden lies on the plaintiff to prove the fact. It is also



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interesting to note that it is really the evidence that has to be appreciated and it may be oral, documentary or circumstantial in nature.

9. It is relevant to refer to the observations made in ***Nirmala Anand Vs. Advent Corpn. (P) Ltd. reported in (2002) 8 SCC 146***, a Three Judge Bench of the Apex Court held as under:-

*“It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree or specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the consideration besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her*



*along, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the consideration to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing the specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.”*

10. In ***K. Prakash Vs. B.R. Sampath Kumar, reported in (2015) 1***

**SCC 597**, the Apex Court observed as under:-

*“The principles which can be enunciated is that where the Plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the Plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or*



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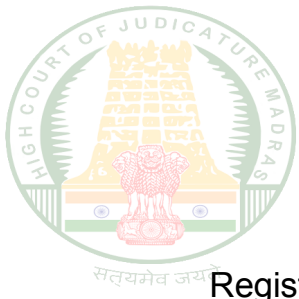


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*against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated u/s 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then the Court has to exercise its discretion in favour of granting relief for specific performance.”*

11. P.W.1 has filed his proof affidavit in line with the contents of the plaint. P.W.2- Arokiyasamy is the attester to Ex.A1 sale agreement. P.W.2 would depose in support of the plaintiff's case. It is the specific evidence of P.W.2 that on the date of sale agreement, the plaintiff gave a sum of Rs.45,000/- to the defendant and the period for performance was fixed as one year. P.W.2 is the plaintiff's paternal aunt's husband. P.W.2 would further depose that the plaintiff and the defendant had a talk for sale of three survey numbers. When a suggestion was posed to him to the effect that the defendant obtained a loan of Rs.25,000/- it was answered in negative.

12. P.W.3 – P. Devendran is the witness who signed before the Sub

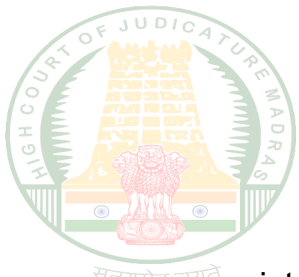


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Registrar in Ex.A1. He has identified the signature found in Ex.A1. P.W.3 would also depose that for the sale agreement Ex.A1, plaintiff gave a sum of Rs.45,000/- towards the sale consideration of Rs.50,000/- and the performance period was fixed at one year. No answers advantageous to the defendant was elicited through cross examination of P.W.2 and P.W.3 by the defendant's side.

13. Therefore, the plaintiff by examining himself as P.W.1 and through examination of attesor and witness attested before the Sub Registrar at the time of registration in Ex.A1 has proved about the sale consideration amount, details of the period for performance and the amount received by the defendant from the plaintiff. From the evidence of P.W.1 to P.W.3, it is made clear that the defendant did not receive the loan amount of Rs.25,000/- as alleged by him with the animus to execute a sale deed in favour of the plaintiff, he received a sum of Rs.45,000/- and executed Ex.A1 sale agreement. Ex.A1 is a registered document. When D.W.1 was questioned about the quantum of amount by the Sub Registrar at the time of registration, he answered that he received an amount of Rs.25,000/- from the plaintiff, is not correct. The reason being that had he given answer contra to the contents of the document, the document would not have been



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registered.  
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14. As regards the Section 16(c) of the Specific Relief Act, 1963, Ex.A1 sale agreement is dated 15.09.1998. Period of performance is fixed as one year. It is the evidence of P.W.1 that despite his request, the defendant did not come forward to execute the sale deed by accepting a sum of Rs.5000/- the remaining sale consideration. The plaintiff has caused to issue legal notice on 26.08.1999, within a year from the date of Ex.A1, calling upon the defendant to execute the sale deed in his favour by receiving remaining sale consideration of Rs.5000/-. Even in the reply notice Ex.B2, the defendant would state that he only received a sum of Rs.25,000/- from the plaintiff as a debt and he is ready to repay the same.

15. More so, it is not the case of the defendant that he has repaid the debt. When plaintiff has examined P.W2 and P.W.3 to prove his case, the defendant has not examined any witness apart from examining himself. From the above said details, the plaintiff has proved as to the readiness and willingness to perform his part of contract in due compliance with Section 16 (c) of Specific Relief Act, 1963. The theory put forth by the defendant is that, Ex.A1 was executed as a loan document and was concurrently rejected by



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the trial Court as well as the First Appellate Court. As the plaintiff has duly proved as per Section 16 (c) of the Specific Relief Act, the plaintiff is entitled for the relief of specific performance and concurrent finding given in favour of the plaintiff needs no interference by this Court. This Court does not have any perversity or infirmity in the findings of the First Appellate Court. This Court also does not find any good reason to upset the findings of the First Appellate Court. No substantial questions of law arise for consideration.

16. Above being the position, this Second Appeal stands dismissed. Sequel to this, the judgment and decree passed in A.S.No.39 of 2007 dated 06.01.2012 by the Subordinate Court, Ariyalur stands confirmed. There is no order as to costs. Consequently, connected Civil Miscellaneous Petition stands closed.

**03.09.2025**

Index:Yes/No  
Speaking/Non-speaking order  
Internet:Yes  
Neutral Citation:Yes/No

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1. The Subordinate Court, Ariyalur
2. The District Munsif Court, Jeyankondam.

R.KALAIMATHI, J.



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