



A.S.No.738 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

A.S.No.738 of 2009

P.Kandasamy

... Appellant

VS.

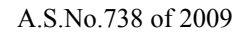
M.Subramaniam

... Respondent

PRAYER: First Appeal is filed under Section 96 of the Civil Procedure Code, to set aside the judgment and decree dated 30.12.2008 passed in O.S.No.104 of 2006 on the file of the Additional District and Sessions Judge (Fast Track Court No.III), Coimbatore.

For Appellant : Mr.I.Abrar Md. Abdullah

For Respondent : Mr.T.Gowthaman
Senior Advocate
for M/s.J.V.Sakthi Balakrishnan



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2. Averment in the plaint:

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3. It was claimed by the respondent that the time was not treated as essence of contract. It was further pleaded by the respondent that inspite of several requests made by him from 26.12.2005, the appellant failed to perform his part of the contract and postponed the completion of the sale transaction. Therefore, the respondent issued a legal notice on 13.02.2006 requesting the appellant to complete the sale transaction by receiving the balance sale consideration. The appellant sent a telegram to the respondent on 13.02.2006 expressing his readiness and willingness and called upon the respondent to get the sale deed executed. After the receipt of the legal notice from the respondent, the appellant did not send any reply. However, the legal notice was sent by the appellant on 13.02.2006 stating that he was waiting in the Sub Registrar's Office on 06.02.2006 from 10.a.m. to 05.00 p.m and the respondent did not turn up for completing the sale transaction. For the said notice of the appellant, a suitable reply was sent by the respondent on 15.02.2006. Since the appellant admitted the alienation of properties to third parties, the respondent was constrained to file a suit for specific performance.



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4. Averment in the written statement of the appellant:

The appellant herein filed a written statement admitting the suit sale agreement and receipt of advance amount of Rs.1,00,000/-. However, the appellant denied the plea of the respondent that he was always ready and willing to perform his part of the contract. It was also pleaded that the appellant expressed that the time was essence of contract and requested the respondent to pay sale price on or before 06.02.2006 and even thereafter the respondent did not pay the sale price within time stipulated. It was further stated that at request of the respondent, the appellant went to the Sub Registrar's Office on 06.02.2006 and the respondent failed to turn up in the Sub Registrar's Office for registering the sale deed. Hence, the appellant issued a legal notice on 13.02.2006 expressing the termination of the agreement. It was also stated by the appellant that he was ready to re-pay the advance of amount of Rs.1,00,000/- to the respondent and sought for dismissal of the suit.

5. Averment in the additional written statement of the appellant:

It was stated by the appellant that he decided to open a retail



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textile show room at Somanur and for the said business purpose he decided to dispose of the agreement mentioned property. As per the understanding, the respondent agreed to complete the sale transaction within a month. However, at the time of preparing of the agreement the time was mentioned as three months. In view of the good relationship between the appellant and the respondent, the appellant also agreed for the request of the respondent and thus the sale agreement came in the existence. It was further pleaded by the appellant that the time was essence of the contract. Since the respondent committed breach of promise, he was not entitled to specific performance of the suit sale agreement.

6. Averment in the reply statement of respondent:

The respondent filed a reply statement and denied the allegation contained in the written statement of the appellant that he decided to dispose of the agreement mentioned property to enable him to invest the sale profits in the business by opening a retail textile showroom at Somanur. It was stated that such a plea was not raised by the appellant in the pre-suit notice and in the original written statement. The said plea was



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raised only in the additional written statement and it exposed the real colour of the appellant. The allegation in the written statement, as if, the respondent agreed to complete the sale transaction within a month was also denied. It was reiterated by the respondent that he was requesting the appellant to complete the sale transaction from 26.12.2005 onwards and the appellant postponed the performance of his part of the contract.

7. Based on the pleadings of the parties, the trial Court framed the following issues:

- (i) Whether the plaintiff was ready and willing to perform his part of contract?
- (ii) Whether the time is essence of the contract?
- (iii) Whether the contract has been terminated in accordance with law?
- (iv) Whether the plaintiff is entitled for the relief prayed for?

8. On behalf of the respondent/plaintiff, he was examined as PW.1 and nine documents were marked as Exs.A1 to A9. On behalf of the appellant/defendant, he was examined as DW.1 and one attestor to sale



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agreement was examined as DW.1. On his behalf, three documents were marked as Exs.B1 to B3.

9. The trial Court on consideration of evidence available on record came to the conclusion that time was not essence of contract and the respondent/plaintiff proved his readiness and willingness to perform his part of the contract. Accordingly, the suit was decreed for the main relief of specific performance. Not satisfied with the judgment and decree passed by the trial Court, the unsuccessful defendant preferred the first appeal.

10. The learned counsel appearing for the appellant would submit that the respondent/plaintiff miserably failed to prove his continuous readiness and willingness to perform his part of the contract and hence the trial Court committed an error in granting the relief of specific performance. The learned counsel further submitted that the appellant entered into suit sale agreement for the purpose of investing the sale profits in his business and hence the time was essence of the suit sale agreement. The respondent having failed to complete the sale transaction within the time stipulated in the agreement was not entitled to seek specific



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performance. The learned counsel also submitted that the appellant by issuing legal notice dated 13.02.2006 marked as Ex.A4 terminated the suit sale agreement and hence the suit for specific performance without a prayer seeking declaration that termination was bad is not at all maintainable.

11. In support of his contention, the learned counsel relied on the following judgments:

S.No	CITATION	PARTY NAME	PAGE NO
01.	(2024) 3 SCC 232	ALAGAMMAL VS GANESAN	01
02.	(2022) 3 CTC 650	PRABAKARAN VS GEETHA	15
03.	(2019) 11 SCALE 107	ABDULLAKOYA HAJI VS RUBIS THARAYIL	20
04.	(2019) 12 SCALE 450	RITU SAXENA VS J.S.GROVER	29
05.	(2019) 6 CTC 348	MOHINDER KAUR VS SANT PAUL SINGH	35



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06.	(2018) 4 CTC 13	S.SAROJINI VS P.MARIAPPAN	40
07.	(2023) 1 MLJ 401	G.BANUMITHRA VS D.SANTHAKUMAR	56
08.	(2021) 2 CTC 556	SENIAMMAL VS MAHAMUNI	77
09.	2023-LW-722	M.VIJAYAKUMAR VS V.SUBBA REDDY AND ORS	86
10.	(2021) 8 MLJ 505	K.KARUPPURAJ VS M.GANESAN	96
11.	2022 (2) SCALE 56	SHENBAGAM AND ORS VS K.K.RATHINAVEL	105
12.	2024 (2) CTC 204	MAHAVEER HEMANTH BHANDARI AND SONS HUF AND ORS VS P.SRINIVASALU AND ORS	119

12. The learned counsel appearing for the respondent/plaintiff would submit that the appellant's own witness DW.2 clearly admitted that the respondent had been requesting the appellant to complete the sale transaction from 26.12.2005 onwards and hence the readiness and



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willingness on the part of the respondent was admitted by appellant's own witness. The learned counsel further submitted that time was not treated as essence of contract and hence the respondent was entitled to maintain a suit for specific performance even after expiry of the time stipulated in the agreement. He further submitted that there is no express termination of agreement by the appellant in his notice marked as Ex.A4 and therefore, there was no necessity for the respondent to seek declaration that alleged termination was invalid.

13. In support of his contention, the learned counsel for the respondent relied on the following judgments:

- (i) ***R.Kandasamy (since dead) and others Vs. T.R.K.Sarawathy and another*** reported in ***2024 SCC online SC 3377***;
- (ii) ***Gaddipati Divija and another Vs. Pathuri Samrajyam and others*** reported in ***2023 Live Law (SC) 327***;

14. Based on the pleadings of the parties and arguments advanced by the respective counsel, the following points are arising for consideration in this first appeal:

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(i) Whether the respondent/plaintiff proved his readiness and willingness to perform his part of the contract?;

(ii) Whether the time is essence of suit agreement?;

(iii) Whether the suit for specific performance simplicitor is maintainable without prayer for declaration that termination of suit agreement was bad?;

(iv) Whether the trial Court was legally justified in granting the main relief of specific performance?.

15. Discussions of points No.1 and 2 :

The suit sale agreement was marked as Ex.A1. A reading of the same would establish that the appellant was owner of the agreement mentioned property as per the settlement deed executed by his mother in the year 2004. The appellant agreed to sell the said property for a sale consideration of Rs.8,10,000/-. On the date of the agreement, the appellant received a sum of Rs.1,00,000/- towards advance. It was agreed by both appellant and respondent to complete the sale transaction within a period of

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டிசம்பர் மாதம் 26ம் தேதி வாதி சுப்பிரமணியம்
என்னிடம் வந்து 3 முறை பிரதிவாதியை கிரய பத்திரம்
எழுதிக்கொடுக்கும்படி கேட்டார் என்றால் சரிதான்.

17. Therefore, the plea raised by the respondent that he had been requesting the appellant to complete the sale transaction from 26.12.2005 had been clearly admitted by appellant's own witness as DW.2. The said statement made by DW.2 in cross examination has not been clarified in any manner in the re-examination. In fact, there was no re-examination of DW.2. When the appellant's own witness DW.2 categorically admitted that the respondent/plaintiff approached him with request for execution of the sale deed from 26.12.2005 onwards, the contention raised by the learned counsel for the appellant that the respondent was not ready and willing to perform his part of the contract within the time stipulated in the agreement pales into insignificance. DW.2 in his evidence clearly stated that he was well acquainted with appellant/defendant viz., Kandasamy. When appellant's own witness makes a fatal admission admitting the plea of the respondent that he had been making a request for execution of the sale agreement from 26.12.2005



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onwards well prior to the expiry of the three months period stipulated in the agreement (i.e. 06.02.2006), this Court comes to the conclusion that the respondent/plaintiff proved his readiness and willingness to perform his part of the contract.

18. The learned counsel for the appellant relied on various decisions in support of his contentions regarding the necessity for the proof of readiness and willingness on the part of the plaintiff in a suit for specific performance. There is no quarrel over the contention raised by the learned counsel appearing for the appellant. In this aspect, it is very well settled law that in a suit for specific performance, it is incumbent on the plaintiff to prove his continuous readiness and willingness. In the case on hand, the respondent/plaintiff deposed as PW.1, in support of his plea for readiness and willingness. The appellant's/defendant's own witness DW.2 deposed about readiness and willingness of the plaintiff from 26.12.2005 onwards. The agreement was entered into on 06.11.2005, the time of three months stipulated under the agreement expires on 06.02.2006. However, from 26.12.2005 onwards, the respondent/plaintiff started requesting the appellant/defendant to execute sale deed as per agreement. In these



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circumstances, the decisions relied on by the counsel for the appellant regarding readiness and willingness is not at all helpful to the appellant especially in the light of the fatal admission by DW.2.

19. It was vehemently contended by the learned counsel for the appellant that time was treated as essence of contract by the parties and therefore, having failed to issue any notice intimating his readiness and willingness to perform his part of the contract prior to expiry of the time, the respondent was not entitled to maintain a suit for specific performance. A close scanning of Exs.A2 to A6 would indicate that the respondent issued a legal notice on 13.02.2006 requesting the appellant to inform his readiness and willingness to execute the sale deed by receiving balance sale consideration within two days. The said notice was received by appellant on 15.02.2006 under Ex.A5. However, the appellant failed to issue any reply notice. However, the learned counsel for the appellant relied on the legal notice issued by the appellant on the very same date namely 13.02.2006 under Ex.A4 and submitted that after expiry of the time stipulated in the agreement, a legal notice was issued to the respondent and agreement was terminated.



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20. A close scrutiny of Ex.A4 would indicate that in the legal notice issued by appellant/defendant, there is no express termination of the suit sale agreement. Though, it was stated by the appellant that as per the terms of agreement, the respondent forfeited the advance amount and he was entitled to sell the properties to 3rd parties, there is no averment in the legal notice terminating the suit sale agreement expressly. In this regard, it would be appropriate to refer to the telegram issued by the appellant on the very same date namely 13.02.2006 under Ex.A3. A perusal of the same would indicate that telegram was sent by the appellant to the respondent on 13.02.2006 at about 13:07 hours, the same reads as follows.

“The agreement entered into between you and our client M.Subramanian, the property in S.F.No.739 of Kalapatty Village, our client is ready to perform his part of contract – Notice follows:”

21. Therefore, by issuing telegram under Ex.A3, the appellant/defendant on 13.02.2006 at about 15:07 hours expressed his readiness and willingness to perform his part of the contract. As per Ex.A1,



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time for performance expired on 06.02.2006. However, on 13.02.2006, the appellant issued telegram expressed his readiness and willingness to perform his part of the contract. Therefore, it is clear that parties never treated the time as essence of contract. It is settled law, mere incorporation to forfeiture clause in the agreement will not make time as essence of sale agreement as far as sale agreement concerning immovable properties. In this regard useful reference may be had to the judgment of Apex Court in ***Chand Rani (dead) by Lrs. Vs. Kamal Rani (Dead) by Lrs.*** reported in ***AIR 1993 SC 1742***;

(ii) ***Govind Prasad Chaturvedi Vs. Hari Dutt Shastri and others*** reported in ***AIR 1977 SC 1005***;

(iii) ***Gomathinayagam Pillai and others Vs. Pallaniswami Nadar*** reported in ***AIR 1967 SC 868***.

22. Had the appellant treated the time as essence of contract absolutely there was no justification for him to issue a notice after expiry of the time limit on 13.02.2006 expressing his readiness and willingness to perform his part of the contract. Therefore, in the facts and circumstances of the case, this Court is not impressed by the arguments made by the learned counsel for the appellant that the time is essence of the contract.



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23. In view of the discussions made earlier, this Court holds that parties never treated the time as essence of contract and the respondent/plaintiff successfully proved the readiness and willingness to perform his part of the contract. Accordingly, point Nos.1 and 2 are answered in favour of the respondent and against the appellant.

24. Discussion of point No.3:

It was vehemently contended by the learned counsel for the appellant that in the absence of declaration that termination of the suit sale agreement was bad, a prayer for specific performance simplicitor is not at all maintainable.

25. In support of the said contention, the learned counsel relied on the judgment of the Apex Court in

I.S.Sikandar (dead) by Lrs. Vs.K.Subramani and others reported in ***(2013) 15 SCC 27.***



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26. In the said case law, on facts, it was held by the Apex Court that time was essence of the contract and suit was filed nearly eleven months after expiry of time stipulated in the agreement. In the said case, the time for performance was fixed as on or before 18.03.1984. The first defendant issued a legal notice on 28.03.1985 extending time till 10.04.1985 and in the said legal notice, he also made clear that in case of failure to complete the sale transaction within the extended date, the agreement would stand terminated. In the light of the said facts, the Apex Court held mere prayer for specific performance was not maintainable in the absence of declaration that termination of agreement was bad in law.

27. The above view was followed in another judgment in ***Mohinder Kaur Vs. Sant Paul Singh*** reported in **(2019) 6 CTC 348** and ***I.S.Sikandar (dead) by Lrs. Vs.K.Subramani and others*** reported in **(2013) 15 SCC 27** cited supra. In that case also, there was express notice terminating suit sale agreement. Therefore, the apex Court had held that in the absence of prayer seeking a declaration that termination of the agreement was bad, mere prayer for specific performance was not maintainable. On the other hand, in the case on hand in Ex.A4, legal notice



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dated 03.02.2006, the appellant/defendant never referred about the termination of the agreement. Though in the notice, he had stated that as per the terms of the agreement, the respondent shall forfeit the deposit and he was at liberty to deal with the property, he failed to terminate the agreement in express terms as in the case of ***I.S.Sikandar (dead) by Lrs. Vs.K.Subramani and others*** and ***Mohinder Kaur Vs.Sant Paul Singh*** cited supra. Yet another fact, which goes against the appellant in this case is the telegram sent by him on the very same day, on 13.02.2006, expressing his readiness and willingness to perform his part of the contract. If the agreement is terminated as per the terms contained therein or as per the legal notice dated 13.02.2006 issued by the appellant, absolutely, there was no justification for him to express his readiness and willingness to perform his part of his contract in the telegram issued on the very same day. The averment in the telegram of the appellant marked as Ex.A3 would indicate that he never treated the time as essence of contract and even after expiry of the time, he was ready to perform his contract. Having issued such telegram, it is not open to the appellant to say the agreement got terminated by the notice issued under Ex.A4 on the very same day especially in the absence of any express termination in the said notice. Over and above, the



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legal notice issued by the respondent under Ex.A2 dated 13.02.2006 was received by appellant on 15.02.2006 under Ex.A5. In the legal notice, the respondent requested the appellant to receive balance sale consideration and executed the sale deed within two days from the legal notice issued by the respondent as Ex.A2. The appellant failed to issue any reply notice mentioning alleged termination of the suit sale agreement. Therefore, in the absence of any express termination of suit sale agreement by the appellant. This Court feels the suit for specific performance simplicitor is very well maintainable without a prayer for declaration.

28. In view of the peculiarity of facts as narrated above, the judgment relied on by the learned counsel for the appellant in ***Mohinder case*** and ***I.S.Sikandar*** case are not helpful to advance his case. Accordingly, issue No.3 is answered against the appellant and in favour of respondent.



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29. Discussion of Point No.4:

In view of the conclusion reached by this Court on point Nos.1 to 3, this Court holds that the respondent/plaintiff is entitled to decree for specific performance as granted by the trial Court. Accordingly, the first appeal stands dismissed by confirming the judgment and decree passed by the trial Court. No costs.

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Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To

The Additional District and Sessions Judge
(Fast Track Court No.III), Coimbatore.



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